

Journal of the Society of Clerks-at-the-Table in Empire Parliaments

EDITED BY
OWEN CLOUGH, C.M.G.

"Our Parliamentary procedure is nothing but a mass
of conventional law."—DICEY

VOL. V

For 1936

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1937
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USUAL SESSION MONTHS OF EMPIRE PARLIAMENTS

| <i>Parliament.</i> | <i>Jan.</i> | <i>Feb.</i> | <i>Mar.</i> | <i>April.</i> | <i>May.</i> | <i>June.</i> | <i>July.</i> | <i>Aug.</i> | <i>Sept.</i> | <i>Oct.</i> | <i>Nov.</i> | <i>Dec.</i> |
|--------------------------------|-------------|-------------|-------------|---------------|-------------|--------------|--------------|-------------|--------------|-------------|-------------|-------------|
| UNITED KINGDOM | | * | * | * | * | * | * | | | | * | * |
| CANADIAN DOMINION | * | * | * | * | * | * | * | | | | | |
| CANADIAN PROVINCIAL: | | | | | | | | | | | | |
| Ontario | | * | * | | | | | | | | | |
| Quebec | * | * | * | | | | | | | | | * |
| Nova Scotia | | | * | * | | | | | | | | |
| New Brunswick | | * | * | * | | | | | | | | |
| Manitoba | | * | * | * | | | | | | | | |
| British Columbia | | * | * | * | | | | | | | | |
| Prince Edward Island | | | * | * | | | | | | | | |
| Saskatchewan | * | * | * | | | | | | | | | * |
| Alberta | | * | * | * | | | | | | | | |
| AUSTRALIAN COMMONWEALTH .. | | | * | * | * | | | | * | * | * | * |
| AUSTRALIAN STATES: | | | | | | | | | | | | |
| New South Wales | | | | | * | * | * | * | * | * | * | * |
| Queensland | | | | | * | * | * | * | * | * | * | * |
| South Australia | | | | | | * | * | * | * | * | * | * |
| Tasmania | | | | | | * | * | * | * | * | * | * |
| Victoria | | | | | | * | * | * | * | * | * | * |
| Western Australia | | | | | | * | * | * | * | * | * | * |
| NEW ZEALAND | | | | | | * | * | * | * | * | * | * |
| UNION OF SOUTH AFRICA .. | * | * | * | * | * | * | | | | | | |
| UNION PROVINCIAL: | | | | | | | | | | | | |
| Cape of Good Hope | | * | | | * | | | * | | | | |
| Natal | | | * | * | * | * | | | | | | |
| Transvaal | | | * | * | * | | | | | | | |
| Orange Free State | | | * | * | | * | | | | | | |
| SOUTH WEST AFRICA | | | * | * | * | | * | | | | | |
| IRISH FREE STATE | * | * | * | * | * | * | | | | | | |
| SOUTHERN RHODESIA | | | * | * | * | | | | | * | * | * |
| INDIAN CENTRAL | | * | * | * | | | | * | * | | | |
| INDIAN PROVINCIAL: | | | | | | | | | | | | |
| Madras | * | * | * | | | | * | | | | | |
| Bombay | | * | * | | | * | * | * | * | | | |
| Bengal | | | * | * | | * | * | * | * | | | |
| United Provinces | | * | * | | * | | | * | | | | |
| The Punjab | | * | * | | | * | | * | * | | * | |
| Bihar | * | * | * | | | | * | * | | * | | |
| Central Provinces and Bihar .. | * | * | * | | | | * | * | | | | |
| Assam | | | * | | | | * | | | | | |
| North-West Frontier | | | | | | | | * | | | | |
| Orissa | | | | | | | | | | | | |
| Sind | | | | | | | | | | | | |
| BURMA | | * | | * | | | * | | | | | |
| CEYLON | * | * | | * | * | * | * | * | * | * | * | * |
| BRITISH GUIANA | | | | | | | | | * | * | | |

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* A subject standing over from the *Questionnaire Schedule* for Volume III.

Journal

of the

Society of Clerks-at-the-Table

in Empire Parliaments

VOL. V.

FOR 1936

GEORGE VI

WE as a Society, whose members sit at the Table in the Houses of His Majesty's Parliaments or Legislatures, in Canada, Australia, New Zealand, South Africa, the Irish Free State, the Empire of India, Southern Rhodesia, the Bahamas, Ceylon, British Guiana and the Mandated Territory of South West Africa, respectfully tender to His Majesty King GEORGE VI and to Her Majesty the Queen, our loyal and deep-felt congratulations upon His Majesty's Accession to the Throne, which we pray he may long honour and adorn. We wish His Majesty a long and glorious reign in the true traditions associated with his high and mighty office, an office which has grown in importance and significance as his dominions have increased in development, wealth and strength, in their advance along the path of progress and civilization.

We, the members of this Society, fervently pray that their Majesties may ever have God's bountiful blessing in their work and in their lives, and that He may give them health and strength to discharge their onerous and important duties.

In reply to the above message, His Majesty graciously intimated that he had received the loyal assurances and good wishes to the Queen and himself and commanded to be conveyed to the members of this Society, his sincere thanks for their kind congratulations on his Accession.

As a small but none the less devoted tribute from our members, the Crown in the badge of the Society on the cover of this Volume is expressed in gold, to mark our humble commemoration of the glorious event.

I. EDITORIAL

We regret to announce the sudden death, on October 20, at Nassau, the Bahamas, of Kenneth Maclure, the Chief Clerk of the House of Assembly. Mr. Maclure was the youngest son of the late Mr. W. G. Maclure of Nassau, and a grandson of the late Dr. W. G. Maclure, a former President of the Bahamas Legislative Council. Mr. Kenneth Maclure was born in Nassau in 1894, where he received his education. He was appointed to the House of Assembly staff in 1913 and to the Clerkship of the Lower House of the Colony in 1919. Previous to that, he had been in the Ward S.S. Line and, later, on the staff of the *Nassau Guardian*. Since 1920 he also held the position of Chief Store Officer and Secretary of the Bahamas Branch of the Imperial Lighthouse Service, an appointment directly controlled and administered by the Imperial Board of Trade.

At five o'clock p.m. on the day of his death, Mr. Maclure attended a meeting of the Finance Committee of the House of Assembly and left shortly afterwards, when told by the Deputy-Speaker that he would not be required at the meeting, although he did not complain of feeling ill.

The funeral took place at Nassau on October 21, and our late colleague was interred in the family vault at the Western Cemetery, the service being conducted by the Reverend Andrew Douglas.

The *Nassau Guardian* of the 21st October, in a leader, referred to Mr. Maclure's death as a tragic loss and a severe shock to the entire community. In a tribute to his memory, that Journal spoke of Mr. Maclure as thorough, meticulous and even exacting in his work, and that the results of his conscientious efforts were evident in the permanent records of the House of Assembly. It would be difficult to express in words the high esteem in which Mr. Maclure was held in the community.

He was a gentleman of the finest type, good and true. He will long be remembered for his very real service to the Colony. Mr. Maclure was unmarried, but our sincere sympathies are respectfully offered to his widowed mother, sisters and brothers.

The House of Assembly has also recently lost the Hon. Harcourt M. Malcolm,¹ K.C., C.B.E., who had been its Speaker for 21 years and for 13 years previously, Deputy-Speaker. Mr. Malcolm had been selected to represent the Colony at the Coronation.

The late Mr. Speaker Harcourt and Mr. Maclure have left behind them a long record of sound precedent, which cannot but be of great usefulness and value to the General Assembly of the Bahamas.

Introduction to Volume V.—The year under review in this the fifth annual issue of our JOURNAL has been truly prolific in constitutional issues within the British Empire. If we continue at the pace we have been making in recent years in the manufacture of constitutions and in putting to test their provisions, as a commonwealth of peoples, we shall soon have in stock almost every conceivable type of constitutional provision which any democratic nation may require, and what is more, be able to inform the anxious inquirer how each particular provision works in practice; even whether it is likely to withstand the wear and tear of time and the susceptibilities of any particular type of national consciousness.

In our last issue we dealt at some length with the Constitution and Legislative procedure of that wonderful country, the Empire of India, truly a realm in itself of the greatest importance, complexity and magnitude. This year, the checks and balances of the federal and provincial or State systems of the Dominion of Canada and the Commonwealth of Australia have caused their statesmen and citizens much concern; the Constitution of the Union of South Africa has undergone further changes; the two Rhodesias are seeking alliance, while

¹ See also JOURNAL, Vol. IV, 33.

on the other hand, the ancient Island of Malta has been divorced from constitutional government and the Dominion of Newfoundland is still in constitutional "retreat." The latest constitutional edifice in the course of construction is the new "Draft Constitution" of the Irish Free State, which as an architectural design is, without doubt, unique in its conception and not according to Dominion Constitutions in its outlook. This State has also produced the latest investigation into the question of a Second House, a document of striking interest.

The rate at which our modest publication is growing is amazing. Difficulty is already being experienced as to where the constitutional references are to end and those in regard to the procedure of Parliament to be acknowledged. It is hoped, however, in our next Volume, to catch up some of the latter subjects, now that the road has been made clearer by this issue. Anyway every effort will be made to breast the tide in this respect and not to make further leeway. We trust, therefore, that the "Clerk of the House," including his Assistants-at-the-Table in training for that onerous office in the many Parliaments of the Empire, as well as the constitutional student at our Universities, the Parliamentary and the members of the public who take an interest in Parliament as a national institution of government, will find in these pages and in those of our previous issues, much matter, not only of interest, but of practical usefulness to them in their work or studies, and thus enable them to render valuable service to the Parliament of the country where lie their hearts and interests.

We continue to receive the greatest encouragement in our work as a Society from the Parliaments of the Empire. Especially do we as a Society appreciate and welcome the new addition to our ranks of the Officers of the Indian Provincial Legislatures.

Acknowledgments to Contributors.—In regard to the contribution of special articles for this issue the thanks of the Society are especially extended to Dr. Arthur Beauchesne, C.M.G., K.C., etc., Mr. T. D. H. Hall, LL.B., Mr. D. H. Visser, J.P., and especially to the author of "The December Crisis," who prefers to remain anonymous.

We acknowledge also with grateful thanks the great help which we have received from our members in all the Parliaments of the Empire and our appreciation of the official papers, memoranda, etc., which have been sent in from all countries.

In this connection we gratefully make special acknowledgments of the ready help rendered by Mr. A. E. Blount, C.M.G., and Mr. G. H. Monahan, C.M.G., respectively the Clerks of the Senates of Canada and Australia. Without their valuable co-operation and support, the success of this issue would have been impossible; and we would like to make special mention of the great willingness with which our colleagues in India are assisting us in the production of the JOURNAL and the attainment of the aims and objects of our Society. Particularly do we mention the ready and willing assistance rendered by the Librarian and his staff at Cape Town, where our research work is now conducted.

In regard to the Article on Library Administration, we are particularly grateful to Mr. Charles T. Clay and Mr. Austin Smyth, C.B.E., respectively, the Librarians of the Houses of Lords and Commons, for their courtesy in contributing information in regard to this subject, as well as to Mr. Martin Burrell, one of the Joint Librarians of Parliament at Ottawa, Mr. Kenneth Binns, Mr. G. H. Scholefield, O.B.E., D.S.C., F.R.Hist.S., and Mr. Paul Ribbink, the Librarians of Parliament at Canberra, Wellington, and at Cape Town.

Questionnaire for Volume V.—The year under review in this issue has been so rich in constitutional happenings in various parts of the Empire and provided so many interesting Parliamentary incidents at Westminster, that most of the matter contained in the Questionnaire for this Volume has had to stand over, as well as supplementary information in regard to subjects dealt with in previous issues. This, however, will be duly included in Volume VI. There has been such a general demand for the Article on "Parliamentary Library Administration," an item standing over from the Questionnaire for Volume III, and for the full Rules to be given thereon, that it was felt the treatment of the subject could not be further delayed. This will also clear the way for many other questions, the subject of items of the Questionnaire for Volumes IV and V, such as, Cases of Privilege, Tampering with Witnesses, Suspension of Standing Orders, Pecuniary Interest of M.P.'s, Crown's Powers under Oversea Constitutions in regard to Amendment of Bills, Approval and Resignation of Speaker, Parliamentary and Un-Parliamentary Expressions, the Address-in-Reply, Official Orders of Precedence, and the many other subjects which are being continually sent in for treatment in the JOURNAL.

E. W. Parkes, C.M.G.—Mr. Parkes retired from the Clerkship of the Commonwealth House of Representatives in March, 1937, after a total service of 40 years, first in the State of Victoria, on the staff of the Upper House, to which he was promoted in 1895, and afterwards in the House of Representatives at Canberra, of which he was one of the original staff in 1901. From Assistant Reader and Assistant Clerk of the Papers, he worked through the various House offices until his appointment to the Table in 1925. Upon the relinquishment of the Clerkship by that renowned Australian constitutional and Parliamentary authority, the late Mr. Walter A. Gale, C.M.G., in 1927, Mr. Parkes was appointed to the Clerk's Chair. Mr. Parkes was born in Melbourne in 1873 and educated in his home State. During the writer's visit to the Commonwealth in 1926, he met the President, Speakers and many of the Members of the seven Parliaments and Mr. Parkes was everywhere held in the greatest esteem, especially in his own State and at Canberra. Mr. Parkes was universally popular with his Members, who all spoke in admiration of his ability and of his quiet manner, no matter how forcibly the Member may urge his point in any office or "at-the-Table discussion" upon coming up against precedent and practice in his attempt to achieve any particular objective in the House.

As a member of this Society Mr. Parkes was a most ardent, prompt and faithful colleague as well as a valued correspondent. His contributions were always reliable and thorough, a factor most important in giving in our JOURNAL an accurate account of any subject in connection with any particular Constitution or House of Parliament. All those engaged in representing constitutional or Parliamentary matters know how important it is to have the information from the fountain source with selection by the man on the spot.

Mr. Parkes will take with him in his retirement the good wishes of his colleagues on the Parliamentary Staff and of all his many friends throughout Australia. We, too, ask to be allowed to share those good feelings and to wish Mr. and Mrs. Parkes *bon voyage* on their travels before settling down again in their home at Canberra.

D. J. O'Sullivan, B.L.—Upon the abolition of the Senate (Seanad) of the Irish Free State, which took effect on May 29, Mr. Donal O'Sullivan ceased to hold office as the Clerk of the Seanad and retired from the Civil Service at the end of September, by which time the records of the Seanad

for its last period¹ had been completed. The abolition of the Seanad also affected the Clerk-Assistant, Mr. D. Coffey, B.L., who was transferred to another Branch of the Service. Mr. O'Sullivan was transferred from the British Civil Service to Dublin shortly before the Treaty, and served for some time in the Department of Local Government and Public Health and other Departments. At the inauguration of the new Constitution he was appointed Clerk-Assistant of the Seanad and Clerk of that House on December 14, 1925. In the retirement of Mr. O'Sullivan our Society loses a most valued authority and helpful correspondent upon all matters connected with the Constitution of the Irish Free State and the procedure of the Seanad. Mr. O'Sullivan was always spoken of most highly and with great esteem, not only by the Members of his own House but also by many Members of Dáil Eireann, whom we have had the pleasure of meeting. Even during the trying times through which the Seanad went before its eventual abolition, Mr. O'Sullivan's attitude was always one of the utmost loyalty to his country and the House he so ably and devotedly served.

We desire therefore to express our sincere regrets upon the retirement of these two "Clerks-at-the-Table," and wish them every happiness and success in whatever walk of life may be theirs in the future.

A. R. Grant, B.A., I.S.O.—Mr. Grant's retirement makes yet another gap in the ranks of our veterans. Mr. Grant was born in 1861 and was educated at Aldeburgh, Charterhouse and Corpus Christi College, Cambridge, where he graduated B.A. in second-class classical honours. On first coming to Western Australia, in 1892, he was engaged in teaching until 1895, when he was appointed Clerk-Assistant of the Legislative Assembly and Clerk of that House in 1911, which position he occupied until 1931, when he was transferred to the post of Clerk of the Parliaments in "Another Place."

Upon making the presentation of a gold watch on his retirement, April 20, 1937, Sir John Kirwan, the President of the Legislative Council, in the presence of the Speaker and practically every Member of both Houses, referred to Mr. Grant's services as follows:

"For 41 years Mr. Grant was a most efficient and highly respected officer of the Houses of Parliament of Western Australia. His extensive knowledge of the meaning and working of our State Constitution and of Parliamentary Procedure, and his

¹ Unlike other Houses of Parliament, the Seanad had no Sessions and sat almost throughout the year.

always correct interpretation of the Standing Orders were of inestimable value. Greatly as we regretted the loss of his aid in these matters, what some of us, old Parliamentarians, regretted even more was the loss of the personal touch with his brilliant intellect, scholarly attainments and shrewdly kindly nature.

:

The President's announcement that the freedom of Parliament House had been extended to Mr. Grant for the rest of his life was received by the Members with genuinely sincere applause. The Premier and Leaders of the Parties in Opposition then added their sincere eulogies of Mr. Grant's valued services.

We hear that Mr. Grant is writing his memoirs, which, from his ready pen, should prove not only pleasant but interesting. Here, again, our Society loses a valued member, but we trust that the torch will be readily taken up by his successor. We wish Mr. and Mrs. Grant, with whom the writer spent a most enjoyable visit at their country home near Perth in 1926, good health and a happy life among their many friends.

J. G. Jearey, O.B.E.—In September, Mr. J. G. Jearey, the Clerk of the Legislative Assembly of Southern Rhodesia, and Secretary to the Prime Minister's Department, retired after an official service of nearly 41 years. Mr. Jearey first entered the Southern Rhodesia Civil Service in 1897 as a clerk in the Administrator's Office at Salisbury and later became Clerk-Assistant of the Legislative Council under the old Constitution. Upon the advent of "responsible government" in 1924 he was selected for the dual-appointment from which he has now retired. Mr. Jearey is highly esteemed in the Colony where he is well known for his abounding energy and zeal. He was on active service in the Bechuanaland Rebellion (1897) and served in the South African Infantry in the Great War (1918). Mr. Jearey has also taken a keen interest in the Volunteer movement in the Colony, and at one time was a member of the Rhodesian Bisley team. Mr. Jearey also occupied the position of Honorary Secretary of the Southern Rhodesian Branch of the Empire Parliamentary Association, which at their Annual General Meeting on May 14, with the Speaker (the Hon. A. R. Welsh, M.P.) in the chair and fully attended by the Ministers and M.P.'s, made Mr. Jearey a presentation of a fitted dressing-case and cheque. In the tribute which was paid to Mr. Jearey, Mr. Speaker said that it was chiefly, if not almost entirely, owing to Mr. Jearey's efforts and knowledge and enthusiasm that the business of the House had gone as smoothly as it had done

during the 12 years of the present form of government. Every Member was largely indebted to Mr. Jearey for his advice and assistance in all matters that had arisen in connection with Parliamentary work; he had proved himself a mine of information and had given good service to all the Members. In adding his own appreciation, Mr. Speaker said that during the last 12 months, when he had acted as Speaker, he was satisfied that he could never have performed his duties in any way satisfactory to the House had it not been for the advice and assistance of Mr. Jearey.

Mr. C. C. D. Ferris, the Clerk-Assistant, on behalf of the staff, then presented Mr. Jearey with an inscribed cigarette-case. Mr. Ferris, in paying tribute to their Chief, remarked that the Standing Orders which were drafted by Mr. Jearey, were adopted with very few alterations and were in operation to-day. The staff expressed their sorrow at Mr. Jearey's retirement and wished Mrs. Jearey and himself every happiness. In associating himself with all these tributes, the Prime Minister (the Hon. G. M. Huggins) said there was no doubt that their first Prime Minister (Sir Charles Coghlan) made a great find when he discovered Mr. Jearey. Mr. Huggins had a more intimate knowledge than most Members of Mr. Jearey's work in his capacity as Secretary of his Department, and it would be many years before the House and the Colony would have a more devoted and loyal public servant. Warm tributes were then paid by the Leader of the Opposition (Mr. H. H. Davies) and the Leader of the Reform Party (Sir Hugh Williams), who hoped one day to see Mr. Jearey sitting in the House as a Member.

Honours.—On behalf of all their fellow-members in the Society, we wish to congratulate the undermentioned members of our profession who have been marks of Royal Favour since the issue of our last Volume of the JOURNAL:

C.M.G.

W. R. McCourt,

Clerk of the Legislative Assembly of New South Wales.

O.B.E.

J. R. Dhurandhar, LL.B.,

*Secretary of the Bombay Legislative Council¹
and Deputy Secretary to the Government
of Bombay in the Legal Department.*

¹ i.e., the new Upper House of the Province.

Oath of Allegiance to King George VI at Westminster.—On Saturday, December 12, both Houses met pursuant to the Succession to the Crown Act, 1707,¹ at 2.45 p.m. to take the Oath of Allegiance to King George VI.

In the Lords,² after Prayers had been said by the Archbishop of Canterbury, the Chairman of Committees (Lord Onslow) first took the Oath and subscribed to the Roll, and then, in the absence of the Lord Chancellor, took his place on the Woolsack. He was followed by the members of the Government, and then by a long queue of Peers, who filed up to the Clerk's Table and recited the Oath:

I swear by Almighty God that I will be faithful and bear true Allegiance to His Majesty King George, his Heirs and Successors, according to law, so help me God.

After each Peer had taken the Oath he shook hands with the Earl of Onslow.

In the Commons,³ the Speaker rose and said: "I shall first take the Oath myself, after which I shall call Members to the Table." A Bible and a Roll of Parliament were then carried by the Clerk to the Speaker's Chair, where Captain FitzRoy, standing, took the Oath and signed the Roll. The Prime Minister and Members of the Cabinet then took the Oath, followed by the junior Ministers and Officials of the Royal Household and other Members on the Government side of the House. Then followed the Leader of the Opposition and the Members of the Front Opposition Bench. Mr. Speaker then called upon the Privy Councillors.⁴

Further references in the *Hansards* of both Houses to the Abdication of King Edward VIII and the Accession of King George VI will not be given, the subject being referred to in Article II hereof.

House of Lords Reform.⁵—In answer to a question in the House of Commons on February 24,⁶ the Prime Minister said that it was not the intention of the Government to introduce legislation during the present Session for the reform of the House of Lords.

On July 13, the Prime Minister received a deputation of Members of both Houses of Parliament to urge the importance of the reform of the House of Lords during the life of the present Parliament. About 150 Members of the two Houses

¹ 6 Anne, c. 41.

² 103 H.L. Deb. 5. s. 779.

³ 318 H.C. Deb. 5. s. 2235-2236.

⁴ *The Times*, December 14, 1936.

⁵ See also JOURNAL, Vols. I, 9-10 and II, 14-17.

⁶ 309 H.C. Deb. 5. s. 32.

were present. The Prime Minister, however, stated that, owing to the grave problems which now occupied the whole attention of the Government, the pressure upon Parliamentary time, and the lack of agreement on the subject throughout all sections of the National Government, he could not at present in any way promise that the Government would initiate any legislation upon the subject.¹

House of Lords (Reading of Speeches).—On June 17² the following motion was moved by the Earl of Crawford:

That in the opinion of this House the growing practice of reading speeches is to be deprecated as alien to the custom of this House, and injurious to the traditional conduct of its debates.

The mover of the motion in his opening speech said that they would cease to be a deliberate assembly if they ceased to deliberate and fell into the easy-going habit of reading their speeches. There were occasions on which it was correct to read speeches in that House or in the House of Commons: when a motion of confidence had to be made; where a personal explanation was desired; or where some subject dealing with the intricacies of finance or of naval construction required a series of carefully-prepared phrases or facts. But those were rather in the nature of announcements and pronouncements. The growing tendency to read speeches undoubtedly spoiled debates. The noble Lord went on to remark, that people read their speeches because they had not mastered the subject-matter of their address. Set speeches inevitably lead to set debates. He had a strong impression that this growth of the practice of reading speeches tended to increase the conversation of Peers during the debates.

Lord Snell remarked, that the ideal debate in that House would be one of free and spontaneous discussion, where thought clashed with thought in the hope that at the end they would have seen the weakness in their opponent's armour and come to some generally useful conclusion. The styles and the atmospheres of the two Houses differed. Disraeli once said—quoted the noble Lord—

“A man may speak very well in the House of Commons and fail very completely in the House of Lords. There are two distinct styles requisite.”

Lord Halifax observed, that there were, and always will be, two elements in any speech—one the actual speech itself

¹ *The Times*, July 14, 1936.

² 101 H.L. Deb. 5. s. 82 to 119. It is regretted that space admits of only a brief résumé of some of these excellent speeches being given.—[ED.]

and the other the thought that was behind the speech. It was a question on which opinion would always differ as to which was better—a good speech badly delivered that was worth reading afterwards, or a speech that was in itself bad but still at any rate conveyed the personality of the speaker, although, devoid of that personality, it would not deserve reading by a wider circle. When did a note cease to be a note and become a manuscript which paralyzed their thoughts and powers of expression and interfered with their ability to get in contact with the thoughts and minds of those in other parts of the House? They should all feel it to be of the greatest importance that their House should be at pains to continue to justify the reputation at present enjoyed by its debates. That reputation would certainly be prejudiced if it were ever to travel far along the road of changing its character of a debating chamber for that of a prize essay society. That would be a disaster.

Lord Rankeillour said, that he thought it quite impossible for those unhappy Junior Ministers, who had to go from department to department and present to the House such crumbs of argument as their departments allowed them, to present their arguments without having them written down.

The Earl of Crawford in his reply observed that it had been a real debate. There had been no read speech that afternoon; there had been no intrusion of typewriting. He objected to typewritten speeches because they had ruined debate. The written speech was not a debating speech.

Question on the motion was put and agreed to.

House of Lords (Ministerial Representation).—On July 23,¹ Lord O'Hagan (on behalf of another Peer) moved to resolve:

That in the opinion of this House it is to be deprecated that neither the Minister nor the Parliamentary Secretary of the Ministry of Agriculture and Fisheries is a Member of this House, whereby the agricultural interest is injuriously affected; and to move for papers.

After a sympathetic discussion, the motion was withdrawn.

House of Lords (Irish Representative Peers).²—On May 8,³ in the House of Commons, the Home Secretary (Rt. Hon. Sir J. Simon), in reply to a Question, said that he was aware that no election of Irish Representative Peers had been held since the formation of the Irish Free State in 1922; that there were at

¹ 102 H.L. Deb. 5. s. 142 to 157.

² See JOURNAL, Vol. IV, 50, n. 1.

³ 311 H.C. Deb. 5. s. 2024-2025.

present certain vacancies in the number¹ of such Peers; that the Courts had decided that a Peer of Ireland was not entitled to vote at Parliamentary elections unless he had a seat in the House of Commons, but that he could not undertake to introduce legislation to deal with the matter.

House of Lords (Bishops² Powers).—In reply to a Question in the House of Commons on February 12,³ the Prime Minister (Rt. Hon. Stanley Baldwin) said that he was not prepared to take into consideration the introduction of legislation to restrict the power of the Lords Spiritual in the House of Lords to intervention in matters concerning the spiritual affairs of the Church.

House of Commons (Presentation of Address: Edward VIII and Queen Mary). On January 23⁴ it was Resolved that Addresses of condolence upon the death of King George V be presented to King Edward VIII and to Queen Mary. Motion was made that the Address to Queen Mary be presented by certain M.P.'s named in the Motion. That to His Majesty was presented by a deputation representing, in accordance with the practice in the case of the Address to a new Sovereign, all shades of political opinion in the House and consisting of Members of the Privy Council, headed by the Prime Minister. When the swearing-in of Members had been completed on February 4,⁵ the Treasurer of the Royal Household (Sir G. Penny, Bart.) came to the Bar, and announced that he had a Message from the King in reply to the House of Commons' loyal and dutiful Address, whereupon he advanced to the Table and delivered the Message, which was in similar terms to that delivered in the House of Lords.

House of Commons (Presentation of Address: George VI).—On December 14, following the Abdication of King Edward VIII,⁶ and upon receipt of a Message from His Majesty George VI announcing his Accession to the Throne, it was resolved in both Houses⁷ that the following Address be presented to His Majesty:

That an humble Address be presented to His Majesty to offer to His Majesty our loyal thanks for His Gracious Message; to express to His Majesty our devotion to His

¹ There are at present 15 out of the original number of life Irish Peers in the House of Lords, which it was the object of one of the articles of the legislative union with Ireland (1801) to keep up to 100, exclusive of Irish Peers entitled to hereditary seats in the House of Lords of the United Kingdom (May, 13 Ed., p. 11).

² See JOURNAL, Vol. IV, 50, n. 1.

⁴ 308 H.C. Deb. 5. s. 10 to 22.

⁵ *Ib.*, 24.

³ 308 H.C. Deb. 5. s. 936.

⁶ See Article II hereof.

⁷ 318 H.C. Deb. 5. s. 2241-2245; 103 H.L. Deb. 5. s. 780-787.

Royal Person and to Her Majesty the Queen, and to assure His Majesty of our conviction that His Reign, under the blessing of Divine Providence, will safeguard the liberties of the country and promote the prosperity and contentment of his people.

House of Commons (Cabinet Ministers in the Lords).—On March 19,¹ a Member asked the Prime Minister if he intended to continue the present arrangement by which two of the Cabinet Ministers representing Defence Forces (the First Lord of the Admiralty and the Secretary of State for Air) did not sit in the House of Commons? The Prime Minister replied that he was not contemplating any change at present. To supplementary questions he replied that he was aware that it was preferable to have a rather larger representation in the House of Commons, but that it was not always feasible to do what one desired, but that he appreciated the importance of having the heads of the chief spending departments in the House of Commons.

House of Commons (Ministers and Press Articles).—On February 20,² question was asked whether, in view of the fact that some years ago it was decided by the Cabinet that no Minister of the Crown should be allowed to write articles for the Press, he had given permission, as an exception, for the publication of the articles now appearing in a certain Sunday newspaper under the name of the present Secretary of State for War. In reply, the Prime Minister (Rt. Hon. Stanley Baldwin) said, that the decision referred to did not apply to writings of a scientific or historical character.

House of Commons (Ministers' Salaries).—On March 25,³ the following motion was moved:

That, in the opinion of this House, the anomalies in the existing scale of Ministerial salaries should be removed as soon as possible, that all members of the Cabinet, with the exception of the Prime Minister, should receive the same salary irrespective of the office held, that the salary of the Prime Minister should be increased, and that all offices held by Ministers should be classified on the lines recommended in 1920⁴ by a Select Committee of this House.

To which an amendment was moved, to leave out the words after "possible" and add, "but without incurring any

¹ 310 H.C. Deb. 5. s. 602-603.

² 308 H.C. Deb. 5. s. 1957-1958.

³ 310 H.C. Deb. 5. s. 1251-1314.

⁴ H.C. Paper 241 of 1920 (H.M.S.O., 1d.).

addition to the present aggregate expenditure." On Question put "That the words proposed to be left out stand part of the Question," the voting was, Ayes, 157; Noes, 101. The amendment was therefore defeated, and the Main Question agreed to: Ayes, 150; Noes, 56.

The Select Committee, above referred to, which heard evidence, recommended the following salaries, arrived at by certain increases and also certain reductions:

| | | | | |
|----------------|----|----|----|--------|
| Prime Minister | .. | .. | .. | £8,000 |
| Ministers— | | | | |
| • (12) Class I | .. | .. | .. | £5,000 |
| (4) „ II | .. | .. | .. | £3,000 |
| (6) „ III | .. | .. | .. | £2,000 |
| (18) „ IV | .. | .. | .. | £1,500 |
| (3) „ V | .. | .. | .. | £1,000 |

The Lord Chancellor and the Law Officers of England and Wales, Scotland and Ireland, being dealt with separately.

The Select Committee Report of 1930 (H.C. Paper No. 170) is very much on the same lines as that of its predecessor.

Further Questions on this subject were asked in the House of Commons during the year under review in this Volume, but definite action was not taken thereon until 1937, in the Volume for which year this subject will be continued.

House of Commons (Rights of Under-Secretaries).—On March 2,¹ in the House of Commons, a Member (Mr. Garro Jones) asked the Prime Minister whether he was aware that the Secretary of the Department of Overseas Trade was by the Statute creating his office required to discharge the functions of an Under-Secretary of State for Foreign Affairs; that while under that Statute such Minister was absolved from incapacity to sit and vote in the House of Commons, the 6 remaining Under-Secretaries were protected by no such provision; that, therefore, the Minister above first-mentioned, being classified as an Under-Secretary, brought the number of Under-Secretaries sitting in such House to 7, of whom 6 came within the penal provisions of the House of Commons (Vacation of Seats) Act, 1864;² and whether, in the light of these statutory provisions, he would take conference with the Law Officers of the Crown.

In reply the Prime Minister referred the Member to the Under-Secretaries of State Act, 1929.³

¹ 309 H.C. Deb. 5. s. 997-998.

² 20 Geo. V, c. 9.

³ 27 and 28 Vict., c. 34.

The Member then raised the matter as a question of Privilege, but Mr. Speaker did not accept that a *prima facie* case had been made out, and invited the Member to confer with him.

House of Commons (Procedure).—On March 30,¹ in the House of Commons, a Member asked the Prime Minister:

- (1) whether he is prepared to consider the appointment of a representative Committee of the House to consider an amendment of the Standing Order allocating time for Private Members' business in order that, if possible, more of the time of the House may be devoted to normal legislative business.
- (2) whether he is prepared to consider the desirability of imposing by Standing Order a limitation on the time occupied by individual Members addressing the House in order to facilitate the avoidance of unnecessary repetition, or, alternatively, to provide that typewritten and manuscript speeches should be printed and circulated instead of being read by Members in Debate?

The Prime Minister replied that no useful purpose would be served by such an inquiry, the procedure of the House having been considered by Committees as recently as 1931 and 1932. No satisfactory remedy for a time limit in the length of speeches had been found. The Prime Minister suggested that the solution rests with the Hon. Members themselves, and commended to their notice remarks made on various occasions by Mr. Speaker.

House of Commons (Private Bill Procedure).—In reply to a Question in the House of Commons on November 26,² the Prime Minister said, that at the request of the Chairman of Ways and Means, the Government proposed to set up a Select Committee with the following terms of reference:

To consider the procedure on Private Bills containing clauses commonly known as "Local Legislation" clauses, and the respective functions of the Chairman of Ways and Means and the Committee of Selection (other than the selection of Members to serve on Committees), in relation to Private Bills; and to report whether any alteration in such procedure or any re-arrangement of such functions is desirable.

House of Commons (Budget Disclosure Inquiry).—In reply to a Question in the House of Commons on May 4,³ the Chancellor of the Exchequer (Rt. Hon. Neville Chamberlain) informed the House that with reference to an alleged leakage

¹ 310 H.C. Deb. 5. s. 1625-1626.

² 318 H.C. Deb. 5. s. 551, 1518-1519. See also 315. *Ib.*, 1691-1692 and H.C. Paper 162 of 1936.

³ 311 H.C. Deb. 5. s. 1345-1349.

of Budget secrets it had been decided to set up a Judicial Tribunal under the Tribunals of Inquiry (Evidence) Act, 1921¹), presided over by a High Court Judge with two eminent members of the Bar. For this purpose a resolution of each House was required, and he was tabling such a resolution that day.

In reply to a Question by the Leader of the Opposition (Rt. Hon. C. R. Attlee), who asked why this method had been chosen instead of the method of Select Committee which was more usual in a matter of that kind, Mr. Chamberlain said:

“Cases which have occurred previously were exactly in point, and they show how very undesirable it is that this kind of matter should be investigated by a Select Committee of the House of Commons, where one cannot be quite certain that all Members would be strictly impartial.

On the next² day, the following Resolution was passed by both Houses of Parliament:

That it is expedient that a tribunal be established for inquiring into a definite matter of urgent public importance, that is to say, whether, and, if so, in what circumstances and by what persons, any authorized disclosure was made of information relating to the Budget for the present year, or any use made of any such information for the purposes of private gain.

On May 6,³ in reply to a Question (by Private Notice) asked by Mr. Attlee, the Chancellor of the Exchequer informed the House of the personnel of the Tribunal.

The Report of the Tribunal was published as Command Paper No. 5184 (Session 1935-1936), the Minutes of Evidence being issued separately as a Home Office publication.⁴

House of Commons (Committee of Supply).—An interesting situation arose in the House of Commons on April 1,⁵ on the motion, “That Mr. Speaker do now leave the Chair,” on going into Committee of Supply on the Civil Estimates, when a Member (Miss Wilkinson) moved the following amendment (duly seconded), namely, to leave out from the word “That,” to the end of the Question, and to add instead thereof:

in the opinion of this House, the time has come when the Government should give effect to the Resolution adopted by the House on the 19th May, 1920, and forthwith place women employed in the common classes of the Civil Service on the same scales of pay as apply to men in those classes.

¹ 11 Geo. V, c. 7.

² 311 H.C. Deb. 5. s. 1551 to 1580.

³ *Ib.*, 1707.

⁴ H.M.S.O., 5d. and 17s. 11d. respectively.

⁵ 310 H.C. Deb. 5. s. 2017 to 2096.

On the Question being put—"That the words proposed to be left out stand part of the Question, the House divided: Ayes, 148; Noes, 156; and all the words after the first word "That" were omitted.

The Parliamentary Secretary to the Treasury (Captain Margesson) then moved:

That Mr. Speaker do now leave the Chair.

whereupon the Leader of the Opposition (Rt. Hon. C. R. Attlee) moved:

That this House do now adjourn.

Mr. Attlee's motion to adjourn now superseded Captain Margesson's motion, for the Speaker leaving the Chair.

Mr. Speaker then put "the Question as amended," namely:

"That, in the opinion of this House, the time has come when the Government should give effect to the Resolution adopted by the House on the 19th May, 1920, and forthwith place women employed in the common classes of the Civil Service on the same scales of pay as apply to men in those classes."

The House divided: Ayes, 134; Noes, 149.

Upon which Captain Margesson again moved, "That Mr. Speaker do now leave the Chair," and Mr. Attlee, "That this House do now adjourn."

The position now was, that the motion, "That the Speaker do now leave the Chair," had been defeated, and the Question before the House was, "That this House do now adjourn."

During the debate a Member (Mr. Mabane) then rose on a Point of Order to quote from May,¹ as follows:

The Committee of Supply must be kept on foot throughout the Session, until closed in due course (see p. 538). Accordingly, when the House, by the acceptance of an amendment to the question for the Speaker's leaving the Chair or by negating that question, has thereby superseded the Order of the Day for the Committee of Supply, that order is revived by a Motion made forthwith, either that the House will immediately or upon a future day resolve itself into the Committee of Supply.

Mr. Speaker, on being appealed to by the Leader of the Opposition, said that his interpretation of the position was that the Question, "That the Speaker do now leave the Chair," had not been decided; that there were several precedents on the point, but he had not had time to look them

¹ 13 Ed., p. 528.

up, and that the passage from May, quoted by Mr. Mabane, was quite correct. "The Patronage Secretary,"¹ continued Mr. Speaker,

could have moved that the House do resolve itself into Committee of Supply forthwith or upon a future day, and that Motion could have been debated and voted upon. If it was carried, then the Motion, "That Mr. Speaker do now leave the Chair," could have been put again. That would have been the correct procedure.

After further debate, the Prime Minister agreed to an appeal from various quarters of the House to adjourn, which was put and agreed to at "Fourteen Minutes before Nine o'clock."

On the following day² the Leader of the Opposition again brought up the matter of the Government's defeat. The Prime Minister, in the course of his remarks, admitted there was a great deal of confusion in the House as to what really happened on the previous day. The first division which cleared the way in the wording of the amendment to be put, went against the Government. . . . What really happened in effect was that the House within 5 minutes gave a contrary vote. . . .

During the debate Mr. Speaker acknowledged that his difficulty was that there appeared to be no precedent for the present situation, because on previous occasions either the motion, "That Mr. Speaker do now leave the Chair," had been defeated on a direct vote, or the amendment moved to that motion had been carried.

Mr. Speaker observed:

On this occasion neither of these things occurred. It is true that the way I put the Question is the way the Question is always put on the Motion "That Mr. Speaker do now leave the Chair" and an Amendment has been moved—"That the words proposed to be left out stand part of the Question." That is really only a preliminary to putting the Question that the words of the Amendment be added. It is stated in Erskine May that a vote against words standing part of the Motion, "That the Speaker do now leave the Chair," is usually taken as a vote for the Amendment, and not as a direct vote on the Question, "That Mr. Speaker do now leave the Chair"; the vote given was for the Amendment. The natural sequel to that, which I am sorry to say I omitted, was to put the Question, "That those words be there added." I ask the House to forgive me for not having put that Question. Had I put the Question, the word "That" would have remained part of the original Motion. But what I put was what would be a substantive Motion, so that the whole Amendment included the word "That." On

¹ Captain Margesson.

² 310 H.C. Deb. 5. s. 2136 to 2158.

that occasion the Amendment was lost. So that we have the curious circumstance that the vote in the first instance was in favour of the Amendment, and then the vote 10 minutes afterwards was against the Amendment. That puts me rather in a quandary as to what is the proper procedure to adopt, but the rules laid down for the practice of the House relieve me of any responsibility. It is laid down that:

the Committee of Supply must be kept on foot throughout the Session.

According to Erskine May, as was stated by the hon. Member for Huddersfield (Mr. Mabane) last night:

when the House, by the acceptance of an Amendment to the question for the Speaker's leaving the Chair or by negativing that question, has thereby superseded the Order of the Day for the Committee of Supply

in the case where the first motion was defeated or an amendment was accepted,

that Order is revived by a Motion made forthwith, either that the House will immediately or upon a future day resolve itself into the Committee of Supply.

That is the rule laid down in Erskine May dealing with similar circumstances to those which have arisen. As to whether it is the proper thing to do, to debate the whole question on the Question, "That this House do resolve itself into Committee of Supply," it is not really for me to say before I hear the discussion as to whether it is in order or not; but certainly the question of putting down a Motion, that the House do resolve itself into Committee of Supply on an early day, is the proper procedure to take.

In reply to a question as to which amendment would be taken should the House come to the motion again, Mr. Speaker said that:

on first going into Committee of Supply, when the Motion is "That Mr. Speaker do now leave the Chair," the Rt. Hon. Gentleman knows that we have a ballot and once a Member has succeeded in the ballot he puts down an Amendment to the Motion, "That Mr. Speaker leave the Chair. . . ." Erskine May lays it down that on the first occasion of going into Committee of Supply only one Amendment is taken; that is to say, that if the Amendment is negatived no further Amendment is taken. On an occasion such as this, when the same Motion will have to be put on another day, I think it remains within my discretion whether I take the Amendment or not. That will be the position.

The Leader of the Opposition said that the most recent precedent was in 1923,¹ when the motion, "That Mr. Speaker do leave the Chair," was defeated. It was then put down again and the Speaker's predecessor ruled that that was on

¹ Commons Manual, 6th ed. (1934), p. 207.

first going into Committee of Supply,' because owing to the defeat of the original motion, the House had not gone into Committee of Supply. On the present occasion there was a variation, because the amendment was actually put and carried, but at the same time the substantive motion was defeated. The effect of that was that the motion, "That the Speaker do leave the Chair," was defeated. It now had to be put again. What he (the Member) asked was whether that action did not revive the right to raise an amendment on first going into Committee of Supply, because the House had not yet gone into Committee of Supply on the Civil Estimates.

Later in the debate Mr. Speaker said, he could not draw on any precedent when precedents were contradictory, and

that if this Motion on Monday is carried and the Question arises that I leave the Chair, I am inclined at the present moment to allow an Amendment which is in my discretion, so as to safeguard the rights of the House.

When asked whether Miss Wilkinson would be able to put down her amendment again for Monday, Mr. Speaker said: "The answer is definitely, 'no.'"

On April 6,¹ the Prime Minister in moving:

That this House will Tomorrow resolve itself into Committee of Supply

said:

Members will have noticed that among the Orders of the Day, most exceptionally, following the precedent of last Friday and Thursday, there is no Order for Supply-Committee, without which the list of Orders seems to be incomplete. That incompleteness we have to remedy before the business of the House can be properly proceeded with. Events are fresh in Members' minds as to the cause that has led to this Motion, and they will remember that the Government suffered a defeat and are paying the usual consequences of that defeat.

* * * * *

There are cases, of course, in which a Government defeat is a clear indication that the Government had lost the confidence both of the House and of the country, and in that case there is but one course for it, that is either to resign or to dissolve. I do not take the view that last Wednesday's proceedings—important as they may have been—showed that the Government has lost the confidence either of the House or of the country.

* * * * *

It was suggested by the Right Hon. Gentleman who leads the Opposition that it is the duty of the Government to give effect

¹ 310 H.C. Deb. 5. s. 2441 to 2446.

forthwith to what he described as the will of the House as expressed in the amendment of the Hon. Member for Jarrow (Miss Wilkinson). If the purpose of the amendment were carried out the result would be an increase of expenditure, and the House by its own Standing Orders has put it out of its own power to effect such an increase, except on the recommendation of the Government in power at the time . . . the principle involved in the amendment is one which the Government cannot accept. . . . I must ask for the support of the House as a matter of confidence.

At the conclusion of the debate, the Question, "That this House will tomorrow resolve itself into the Committee of Supply," was put and carried: Ayes, 361; Noes, 145.

House of Commons (Witnesses).—With reference to the Article in last issue, on "Witnesses,"¹ the recommendation of the Select Committee contained in paragraph 15 of its Report² has since been embodied in House of Commons Standing Order No 56A, which reads:

56A. No document received by the clerk of any select committee shall be withdrawn or altered without the knowledge and approval of the committee. (Adopted, July 15, 1935)³

House of Commons (Member's Apology).—On July 28,⁴ Mr. F. S. Cocks (Broxtowe) asked leave to make a personal statement concerning a reflection he had made in unParliamentary terms upon the Secretary of State for the Home Department in the House on the 24th *idem*.⁵ The Member asked leave to withdraw his observation and to express deep regret for having made it, as well as to tender his sincere apology to Mr. Speaker, to the Home Secretary and to the House. Upon which the Home Secretary (Rt. Hon. Sir John Simon) thanked the hon. Gentleman and said that he had never regarded his remark as having been seriously made, and that he very willingly accepted his withdrawal and apology.

House of Commons (Hansard).—In reply to a Question by a Member in the House on November 26,⁶ as to whether a decision had yet been reached as to the setting up of the Parliamentary Debates in a type and style different from that now used, the Financial Secretary to the Treasury (Lt.-Col. Colville) said, that arrangements had been made for placing in the Library, for the information of Members, copies of the daily part of the House of Commons debates printed with a

¹ JOURNAL, Vol. IV, 114-125.

³ Com. Paper 166, 1936.

⁴ 315 H.C. Deb. 5. s. 1323-1324.

⁶ 318 H.C. Deb. 5. s. 554.

² Com. Paper 34, 1935.

⁵ *Ib.*, 845.

new face type, which it was proposed to introduce early next year.¹

House of Commons (M.P.'s Free Sleeping Berths).—On July 31,² in reply to a Question by the Leader of the Opposition, a Minister, on behalf of the Chancellor of the Exchequer, said that representations had recently been received from a number of Members of all parties whose constituencies were distant from London, urging that the present travelling facilities for Members be extended by the provision of free first-class sleeping berths between London and their constituencies, and that the Government were prepared to accept the proposal, the new arrangement to come into operation on the re-assembly of the House after the Summer Recess.

House of Commons (Ventilation).—The First Commissioner of Works³ (Lord Stanhope) issued, in July,⁴ for the information of M.P.'s, a Note on the Ventilation of the House of Commons. After explaining the system and referring to the tests that had been made from time to time, the Note stated that investigations had been made by the Government Chemist as to the quality of the air in both the Lords and Commons and the question was remitted to the Joint Committee of the Department of Scientific and Industrial Research and the Medical Research Council on research in heating and ventilating. Hygrometers for measuring the relative humidity or amount of moisture in the air were to be installed. Some temporary radiant electric panels were also to be installed in the Commons for heating and, if successful, the system completed. These systems, together with provision for the ventilating and cooling of the Chamber in the summer months, might cost to complete altogether about £20,000. It was stated that authority would be sought later for installing a similar system in the House of Lords.

House of Commons (Members and Microphones).—In reply to a Question in the House of Commons on February 24,⁵ as to whether his attention had been drawn to the bad acoustic properties of the House of Commons, and the difficulties experienced by Members sitting on the back-benches in hearing the speeches of Ministers; and would he consider

¹ This improved face type will be seen in Volume 319 (January 19 to February 5, 1937). So many of the Oversea Parliament *Hansards* are printed in a small type, that a comparison of their type with that in H.C. Deb. Volumes 318 and 319 may be instructive.—[Ed.]

² 315 H.C. Deb. 5. s. 1858.

³ *i.e.*, P.W.D.

⁴ *The Times*, July 30, 1936.

⁵ 309 H.C. Deb. 5. s. 27.

having installed in the House microphones and loud-speakers, the First Commissioner of Works said:

I do not consider that the acoustics of this Chamber are unsatisfactory and I knew of no system of microphones and loud-speakers, which would be suitable for installation in this House, when it is the practice for hon. Members to speak from different places.

The Minister was then asked if he would consider introducing the same system that is installed in "another place," to which he replied:

No, for the reason I have already given. The reason why the system referred to works in "another place" is, I gather, because the microphones are on the Table there, but as hon. Members in this House speak from many different parts of the House, it would not be practicable.

Another Member then asked as a supplementary Question:

although my Right Hon. Friend can be heard anywhere in the House when he replies at Question Time, would it not be desirable to have some installation of the kind mentioned, in the Press Gallery, so that the answers to questions given by some other Ministers might be heard in the Press Gallery?

To which the Minister replied:

I remember Mr. Speaker once saying that anybody who was worth hearing could be heard in this House.

House of Commons (Pensions for M.P.'s).—On March 19,¹ a Member asked the Chancellor of the Exchequer whether, seeing that M.P.'s only received an annual sum² for expenses necessarily incurred while carrying out their Parliamentary duties, he would consider an optional pension scheme for M.P.'s who had served one or more constituencies for 15 or 20 years or more and had attained 60 or 65 years of age, such optional pension to be paid only after ceasing Membership of the House of Commons. The reply was: "I do not feel able to entertain this suggestion." In reply to a supplementary Question, the Chancellor said that he would be pleased to have representations from any Member desiring to discuss the Question with him.³

Mother of Parliaments.—History of Parliament—Biographies of the Members of the Commons House, 1439-1509. The Committee on the History of Parliament.

This history was planned after a Committee, appointed by

¹ 310 H.C. Deb. 5. s. 611, 612.

² £400.

³ The treatment of this subject will be continued in Volume VI of the JOURNAL, a Departmental Committee of Inquiry having been appointed in July, 1937.—[Ed.]

the Prime Minister, had reported that sufficient material was available for a record of the personnel and politics of the House of Commons from A.D. 1264, and had recommended that the work should be undertaken.

A Committee was accordingly formed after a joint meeting of members of both Houses to supervise the work. The History will describe the people in Parliament, their ideas, standing and politics, and will trace the gradual growth of Parliamentary representation and government from its earliest beginnings in A.D. 1264 to the Representation of the People Act of 1918. The story of these 650 years of slow development will be divided into 17 or 18 periods, to each of which two or three volumes will be devoted. These volumes will provide:

BIOGRAPHIES, arranged in alphabetical order, of the Members of the Commons House, together with a commentary on the facts disclosed in these biographies.

LISTS, with ample identification, of all the Members of both Houses in each Parliament, arranged in chronological order, showing by-elections and the numbers voting in each contested election.

PREFACES to the account of each Parliament will summarize what is known of its composition and work.

A series of general volumes, including documents, debates, etc., illustrating the growth of the Institution, will also be provided. An account of the Parliaments between 1439 and 1509 will form the subject of three volumes. The first of these, compiled by the Rt. Hon. J. C. Wedgwood, M.P., and Miss A. D. Holt, M.A., is now published. When completed it is expected that the History will comprise some 40 volumes.¹

Palace of Westminster (Stonework).—On February 24,² in the House of Commons, the First Commissioner of Works (Rt. Hon. W. Ormsby-Gore), in reply to a Question as to what arrangements were made for the disposal of stone removed from the Houses of Parliament in connection with the restoration work now in progress, said: Large stone suitable for rock gardens is being disposed of in large or small quantities at 10s. a ton, and smaller stone at 5s. a ton, purchasers to pay or provide for cartage. Ornamental pieces suitable for sun dials, garden ornaments, etc., are available at various fixed prices.

¹ H.M.S.O. Super Roy. 8vo lvi + 984 pp. Six coloured plates, £2.0.10, 6 lb. 14 oz.

² 309 H.C. Deb. 5. s. 27-28.

The stone available,' added the Minister, may be seen on application to the Superintendent of Works (Mr. Holman) at the Houses of Parliament, Westminster.

Captain M. J. Green, the Clerk of the Union Senate, when recently in England, arranged to obtain a fine specimen of an unicorn from the Royal Arms, which has been erected, with an inscription, in the main entrance Lobby of the Houses of Parliament at Cape Town.

In reply to another Question on this subject on November 23,¹ the Parliamentary Secretary to the Minister of Health, on behalf of the First Commissioner of Works, said:

It is anticipated that the restoration of the stonework of the exterior of the Houses of Parliament will be completed by March 1942.

Palace of Westminster (School Privilege).²—Westminster School, founded in 1339, occupies some of the buildings of the former Westminster Abbey. In olden times the Abbot of Westminster was a Peer of Parliament, and possessed many privileges, now enjoyed by the Dean. At one time the Commons sat in the Chapter House of the Abbey. The school also takes day boys and they are to be seen in London during term, in dark coat and trousers, wearing a black silk top hat, when going to and from school. At the Coronation ceremony the boys enjoy the special privilege of witnessing the ceremony and shouting "Vivat" as the King enters.³

On Saturday, May 16, the privilege of Westminster School of landing at the water stairs of the Palace of Westminster, revived last year after a lapse of a century, was again exercised when the first Eight, accompanied by two launches carrying masters and guests, rowed from Putney and disembarked at Black Rod's Stairs. Until 1864, the school boat-houses were on the Lambeth shore of the River Thames, just opposite the Palace, where St. Thomas's Hospital now stands, and until the Great Fire of 1834, which destroyed the old Houses of Parliament, the boys were accustomed to make their way through the Palace to the waterside and ferry across to their boats. The rebuilding after the fire naturally prevented their usual access, and in 1838 the then Headmaster asked the Home Secretary that a temporary "floating quay" might be built by the wharves in Abingdon Street, and that at the completion of the work, stairs might be made in the Palace for the use of the school, but no school crew seems to have set foot

¹ 318 H.C. Deb. 5. s. 25, 26.

² *Whitaker's Almanack*, 1937, p. 225.

³ *The Times*, May 18, 1936.

on them until, by the courtesy of the Lord Great Chamberlain, the privilege was revived last year.

Palace of Westminster (Rights of Guides).—It was reported in *The Times*,¹ that one H. J. Cole, a guide, appeared on remand at Bow Street Police Court, charged with obstructing a Police Officer at the entrance to the House of Commons on January 29. It appears that the defendant claimed the right to enter the Palace of Westminster and refused the right of the police to bar his admission. Before the adjournment of the hearing *sine die*, the magistrate said that his present impression was that the Lord Great Chamberlain,² particularly when neither the House of Lords nor the House of Commons was sitting, had the right to do what the defendant said he had no right to do. There was no written evidence, or very little, on the subject; but the matter had been investigated at considerable length by a Joint Select Committee in 1901,³ and he would examine their report before giving his decision.

The same person was defendant in a similar case⁴ in respect of the Monday following the 29th January.

On the 8th May, Cole was fined 20s and ordered to pay one guinea costs for obstructing a certain police officer in the execution of his duty. Cole gave notice of appeal. In giving judgment on such date the magistrate said that he found that the police officer received a written order from the secretary to the Lord Great Chamberlain dated 6 November, 1935, to exclude the defendant. On the appointment of each new Serjeant-at-Arms the Lord Great Chamberlain issued warrants for the custody of such parts of the Palace of Westminster as were occupied by the House of Commons. Although no such warrants were issued to the House of Lords, they also exercised an inherent right to make regulations for the use of that part of the Palace they occupied. It appeared also that all repairs and structural work were carried out by the Office of Works,⁵ though a request or instructions as regards the House of Lords was issued by the Lord Great Chamberlain.

Nevertheless, notwithstanding the powers of the House of Lords, the Serjeant-at-Arms, and Office of Works, the Lord Great Chamberlain remained the nominal head of all authority. He exercised a general authority at all times, and when the Houses were not sitting a complete one. The finding of the Joint Select Committee and Halsbury's *Laws of England*

¹ March 23, 1936.

² No 212, 1901.

³ *Ib.*, May 8, 1936.

⁴ See also JOURNAL, Vol III, 35-36

⁵ *The Times*, March 25, 1936.

⁶ *i.e.*, P.W.D.

(Vol. 21, p. 631) was that when the Houses were not sitting the Lord Great Chamberlain had an absolute authority over all the buildings and issued orders for the admission of strangers. On the day of the alleged offence the Houses were not sitting, and he found that the constable was obstructed while executing orders lawfully given.

Acoustics.¹—On March 11,² an address before the Royal Society of Arts, London, was given by Mr. G. W. Kaye, Superintendent of the Physics Department of the National Physical Laboratory on "The Acoustics of Halls," of which the following references may be of interest to our readers.

The lecturer opened by saying that the folly of erecting auditoriums, however beautiful and dignified, in which it was impossible to hear either speech or music to advantage, was becoming recognized. There were many halls in this country, particularly those domed monuments erected in prosperous times a generation ago, the acoustics of which were lamentable. Thanks mainly to the pioneer work of W. C. Sabine and the American school of workers, together with that of Hope Bagenal and others in this country and in Germany, architectural acoustics was no longer shrouded in mystery and empiricism, but was a science of which most of the physical principles were simple and well established and the practical outcomes were mainly predictable. In the meantime there were grounds for encouragement, and the architectural profession was no longer likely to embark on a big building project without seeking advice on the several acoustic aspects. This was exemplified by the new Palace of the League of Nations, in which the acoustics of the large Assembly Hall (with a volume of 700,000 c. ft. and seating some 2,000 persons) had been entrusted to the Architectural Acoustics Committee of the Department of Scientific and Industrial Research.

The requirements for satisfactory hearing in a hall were simple. There should be freedom from troublesome extraneous noise; the shape and size of the hall should be such that the loudness of sounds was everywhere adequate and uniform; there should be appropriate degrees of reverberation throughout the speech and musical ranges of frequencies, so that rapidly succeeding sounds did not overlap unpleasantly and the original quality of speech and music was not impaired.

Discussing the size and shape of a hall, the lecturer said, a properly designed ceiling was by far the most effective reinforcer of sound by reflection. The principle was exemplified very well by a comparison of the House of Lords and the House of Commons, which were erected in 1848. Both Houses were given very high ceilings and their acoustics were manifestly bad. The complaints in the Commons were so

¹ See also JOURNAL, Vol. I, 50-52.

² *The Times*, March 12, 1936.

great that the Chamber was fitted after two years with a false glass ceiling about 35 ft. high,¹ a remedy which was completely successful. The volume was now 127,000 c. ft., and the reverberation period with a full House about 1.5 seconds.

Victoria (Constitutional Amendment).—During the year amendments to the Constitution of particular interest were made for the following purposes:

- (a) to make provision for an additional salaried Minister of the Crown (Act No. 4367).
- (b) to make provision for the re-division of the State of Victoria into Electoral Provinces for the Legislative Council and preferential voting at General Elections for the Legislative Council, and for other purposes (Act No. 4409).
- (c) to provide for the retirement of Judges of the Supreme Court of Victoria at 72 years (Act No. 4437).

During the year 1935, the following amendments of particular interest were made to the Constitution:

- (d) to allow railway employees and civil servants to contest any Parliamentary election without having to resign from the service (Act No. 4334).
- (e) to provide for compulsory voting at elections for the Legislative Council and for a new method of compiling the rolls (Act No. 4350).

South Australia (Electoral Reform).—An Act, the Constitution Act Amendment Act, was passed during the 1936 Session (and reserved for His Majesty's Assent) reducing the number of Members of the House of Assembly from 46 to 39, to be returned by 39 single electorates instead of 46 Members returned by 19 constituencies. This amendment of the Constitution is to take effect at the next General Election of the House of Assembly, which, in ordinary circumstances, will be held early in 1938. The Legislative Council is not affected, except in respect to an adjustment of boundaries of Districts to conform with the altered House of Assembly Districts.

New Zealand (Constitutional Amendment).—*Parliamentary Under Secretaries.*—Strictly speaking, there was no amendment to the Constitution during the year under review, but provision was made for the appointment of Parliamentary Under-Secretaries under the Civil List Amendment Act²

¹ See JOURNAL, Vol. IV, 37 on alterations to Union House of Assembly.

² 1 Edw. VIII, No. 21.

from amongst the Members of either House to any of the Ministerial Offices specified in the Third Schedule to the Principal Act,¹ including any other such office, whether created before or after the passing of Act No. 21. Vacation of such office, however, is necessary upon ceasing to be a Member of either House or upon dissolution of Parliament. Parliamentary Under-Secretaries are required, as soon as may be after appointment, to take an oath of office as prescribed in the Schedule to the Act, administered by any Member or by the Clerk of the Executive Council. A salary of £600 p.a. is attached to an Under-Secretaryship, with the usual allowances to which Members of such Council are entitled. The functions of an Under-Secretary are described as, such of the powers, duties and functions of a Minister of the Crown, under the direction of the particular Minister to whom such Under-Secretary is assigned, as may be conferred, but, with the right of such Minister to exercise any powers, etc., assigned to his Under-Secretary.

Increase in Cabinet.—Provision is also made in the Act for payment to be made to 11 Ministers of the Crown, in addition to the Prime Minister, in place of 10 such Ministers, without the increase of the total salaries, individual salaries being reduced accordingly. In respect of each portfolio held by a Minister, there are one or more of the private members attached in an advisory capacity and the Minister apparently confers with them and allots certain matters for their investigation and recommendation.

Concessions to M.P.'s.—As the legal point had been raised as to whether the grant of rail and other concessions to Members of Parliament was a payment in addition to their Parliamentary honorarium, the Act provides² that the appropriation of moneys providing benefits or privileges of a specified kind to Members or former Members of Parliament or to members of their families shall be sufficient authority for such grant.

Union of South Africa (Coronation Oath).—During the year an Act³ was passed, providing for an Oath to be administered to the King, either on assuming the government of the Union or at his coronation, the purport of which shall be that he will govern the people of the Union, and of any territory under its jurisdiction, according to the statutes agreed on in the Parliament of the Union and according to their other laws

¹ Civil List Act (11 Geo. V) (No. 31 of 1920).

² sec. 10.

³ No. 7 of 1937.

and customs; and that he will cause law and justice, in mercy, to be executed in all his judgments. The other section of the Act empowers the Governor-General of the Union to appoint and authorize a person to administer the Oath abovementioned and to arrange with all or any of the other Members of the British Commonwealth of Nations for a collective Oath to be administered to and to be taken by the King in a form to be agreed upon: provided that the purport of the Oath as above set forth be embodied in such collective Oath.

Union of South Africa (Parliamentary Franchise).— During the year under review in this Volume, sec. 35 of the Union Constitution¹ was amended by the Representation of Natives Act,² an Act which, under the Constitution, as it sought to amend one of its "entrenched provisions,"³ had to be passed at a Joint Sitting of both Houses of Parliament and supported by $\frac{2}{3}$ of its total number of Members. This Act, in addition to providing for other Native representation, to be dealt with later, removed all Native voters from the Parliamentary and Provincial Council voters' rolls in the Cape Province, where they voted with European voters, and transferred them to a special "Cape Native Voters Roll" divided into 3 additional and purely Native constituencies for the Union House of Assembly, and 2 such constituencies for the Cape Provincial Council, in both of which representation is by Europeans only. Under the Act of Union, Non-Europeans could be elected representatives in the Cape Provincial Council, but since the passing of the Representation of Natives Act abovementioned, representation of Non-Native Constituencies in the Cape Provincial Council will be confined either to Europeans or to Coloured Persons (*i.e.*, Non-Europeans, excluding Natives). This Act, however, did not take away the Parliamentary and Provincial vote from the Non-Europeans in the Natal Province, where owing to the required qualifications their number is small.

To understand the position in the Union today, in regard to the Parliamentary franchise, it is necessary to go back to the conditions prevailing immediately prior to Union in 1910, when the 4 present Provinces thereof were 4 separate "responsible government" Colonies, the Cape of Good Hope, Natal, the Transvaal and the Orange River Colony, which last-named in 1910 reverted to its old name of Orange Free State.

¹ South Africa Act, 1909 (9 Edw. VII, c. 9).
² secs. 33, 35, 137 and 152.

³ No. 12 of 1936.

In the inland Colonies of the Transvaal and Orange River, the franchise was limited to European male adults, British born, or naturalized, of 6 months' residence. In the Cape Colony and Natal, the coastal Colonies, however, the Parliamentary franchise was more qualified.

In the two coastal Colonies the requirements as to age, sex and citizenship were the same. In the Cape, the franchise was open both to European and Non-European male adult alike who could write his name, address and occupation and who was the occupier for 12 months of property worth £75 within the electoral division for which he sought registration; or, had been in the receipt of salary or wages of not less than £50 p.a. for 12 months, provided he had resided during the last 3 months within the electoral division for which he claimed registration. There was also a special qualification in regard to persons on the voters' roll of Griqualand West.

In Natal, there was no educational qualification, but the voter must have resided in the Colony for 3 years and have (a) an income worth £96 p.a.; or (b) own immovable property within the constituency worth £50; or, rent immovable property in the constituency worth £10 p.a. Persons on the Utrecht and Vryheid Burghers Roll of the South African Republic, districts which were transferred from the Transvaal to Natal after the Anglo-Boer War of 1899-1902, were also qualified to vote in the absence of other qualifications. The process for qualification of a Non-European, however, was as follows: a "Native," which term was defined as including Coloured people, must have had (c) 12 years' residence in the Colony; (d) have been exempted from the operation of Native Law for 7 years; (e) have been recommended by 3 duly qualified European electors and have thereafter received a certificate from the Governor, the grant or refusal of which lay in discretion of the Governor-in-Council, entitling the voter to be registered as a Coloured voter. Further, no persons could so vote who were Natives, or descendants in the male line of Natives of countries who had not prior to May 23, 1896, possessed representative elective institutions founded on the Parliamentary franchise, unless they had obtained an order of exemption from the Governor-in-Council.

In regard to all 4 Colonies, there were the usual legal disqualifications, such as lunacy, treason, imprisonment, etc., with minor differences. Many of these, however, were after Union made more uniform, and the electoral laws consoli-

dated by Union Acts.¹ By Union Act No. 23 of 1926 special provision was made for diamond diggers in the Cape Province.

Apart from such minor exceptions, the four old Colonial franchises continued after Union until 1930, when by the Women's Enfranchisement Act,² the European male adult franchise of the Transvaal and Orange Free State Provinces was conferred upon all European adult females who were "Union Nationals," throughout the Union. In the following year, the European franchise was further extended by the Franchise Laws Amendment Act,³ which applied the European male adult suffrage also to the coastal Provinces. Thus, property, wage and educational qualifications now only remain in the Cape Province for the non-Native non-Europeans who qualify for the general voters' roll. In the Natal Province, the special qualifications for the non-European franchise for the Union House of Assembly and Provincial Council remain as before, and on the general voters' roll.

The Representation of Natives Act abovementioned, which is of fundamental importance to the constitutional position of Natives as distinct from Europeans and Coloured persons in the Union of South Africa, makes special provision for:

- (a) the representation of Natives in the Senate by (at present) 4⁴ Senators of European descent (secs. 4 and 8-11); (*see also* para. (e) hereof).
- (b) the representation of Natives in the House of Assembly by 3⁵ European Members elected by the registered Native voters only of the Cape Province (secs. 6 and 12-15);
- (c) the representation of Natives in the Provincial Council of the Cape Province by 2⁶ Provincial Councillors of European descent elected by the registered Native voters of that Province (secs. 6 and 16-19); and

¹ Nos. 12 of 1918, 11 of 1926, and 24 of 1928.

² No. 18 of 1930.

³ No. 41 of 1931.

⁴ These are in addition to the 40 Senators, 8 elected according to P.R. by the Members of the House of Assembly and of the Provincial Council of each of the 4 Provinces and 8 nominated by the Governor-General-in-Council, 4 of whom are selected "on the ground mainly of their thorough acquaintance, by reason of their official experience or otherwise, with the reasonable wants and wishes of the coloured races."

⁵ These are in addition to the 150 M.P.'s representing Union general constituencies elected by the European voters, and in the Cape Province together with the Coloured voters, as well as in the Natal Province together with a certain number of non-Europeans.—[Ed.]

⁶ These are in addition to the 61 Provincial Councillors elected by the general constituencies of the Province.

- (d) a Natives' Representative Council of Native Members for the Union (secs. 20-29) consisting of 6 official Members, namely, the Secretary for Native Affairs and the 5 Chief Native Commissioners, 4 nominated Native Members appointed by the Governor-General, 1 for each of the electoral areas into which the Union is divided for the election of Senators (as above) and 12 Elected Native Members, 3 for each electoral area. In the Transkei all 3 will be elected by the electoral college. In the other electoral areas, such college, excluding the Native Advisory Boards, will in each case elect 2 Members and such Boards 1, thus ensuring the Native urban population in each of these areas will have at least 1 representative. The Non-Official Members of the Council hold their seats for 5 years;
- (e) for the division of the Union into the following four electoral areas for the election of the 4 Senators under Act No. 12 of 1936 the delimitation is as follows:
 - (i) Natal Province.
 - (ii) Transvaal and Orange Free State Provinces.
 - (iii) Transkeian Territories.
 - (iv) Cape of Good Hope Province (excluding the Transkeian Territories).

These Senators are elected by electoral colleges, each composed of a certain number of voting units, which differ in the various electoral areas owing to differences in local conditions. The voting units of the electoral college for the Transkeian electoral area are the Native Members of the United Transkeian Territories General Council. The voting units in other electoral areas include the Chiefs of certain Tribes, local councils, Native Advisory Boards, and certain other persons or bodies of persons representing the Natives of the particular electoral area.

The Governor-General¹ is, however, empowered to increase the number of the electoral areas abovementioned, if he is satisfied that civilization and local government amongst Natives have progressed to such an extent as to justify such increase. Such increase in the number of electoral areas may, however, not be made until after the expiration of 7 years from the Act, but the total number of such areas may not exceed 6.

Both the Senators and House of Assembly Members elected

i.e., Governor-General-in-Council.

in terms of the Representation of Natives Act hold office for 5 years, and are unaffected by any dissolution, or in the case of the 2 Members of the Cape Provincial Council, by the expiration of such body after the fixed period of 5 years for which each Provincial Council is elected.

Should the seat of any such Senator, M.P. or Provincial Councillor become vacant before the expiry of the period of 5 years, another may be elected in his stead to represent his electoral area, who holds office for the remainder of the period.

The qualifications for election as a Senator, M.P. or M.P.C., under the Act, are those laid down in sections 26 and 44 respectively of the South Africa Act, but such Senator, M.P. or M.P.C. is also required to have lived for 2 years within a Province embracing the electoral area he wishes to represent. Sections 51 to 56 inclusive apply also to such Senators, M.P.'s and M.P.C.'s who are given all the rights, powers, privileges, etc., enjoyed by the other Senators, M.P.'s and M.P.C.'s, except that neither the 3 Native Representative M.P.'s nor the 2 M.P.C.'s in the Cape may vote at the election of the 8 Senators representing that Province.

Union Provincial Councils.—By authority of the Governor-General of the Union of South Africa, in accordance with the power vested in him by section 76 of the South Africa Act, 1909,¹ the allowance to Members of the Provincial Councils of the four Provinces of the Union has been increased from £120 p.a. to £180 p.a. as from April 1, 1935.

Union of South Africa (Transvaal Province).—On September 30,² His Honour the Administrator of the Province, who under the Constitution³ has the right to sit and speak but not to vote, in the Provincial Council, by leave of the Council, made the following statement in regard to the appropriation of funds and the Administrator's powers, which statement was Ordered by the Council to be incorporated in the Votes and Proceedings:

Yesterday the Hon. Member for Gezina [Mr. Brink (*M.E.C.*)] raised an important constitutional point. The Hon. Member questioned my power to refuse to recommend the appropriation of funds from the Provincial Revenue Fund for the purpose of expenditure on a specific service—in this case the restoration of Teachers' Salary Cuts. The Hon. Member said that when the members of this Council practically unanimously adopted a resolution which involved the appropriation of revenue, then

¹ 9 Edw. VII, c. 9.

³ 9 Edw. VII, c. 9, sec. 79.

² VOTES, 1936, No. 4, 25-26.

the will of the Council should over-ride the power of the Administrator to refuse to recommend the appropriation. The Hon. Member further stated that in 1909 when the South Africa Act was passed, the conditions were different from those appertaining to-day. He said that because, at that period, the full revenue of the Province was provided by the Union Government, power was vested in the Administrator to control expenditure and that, as the Province is now autonomous, the power of the Administrator in that direction ceased to exist.

I regard it as my duty to place the facts before the Council in order that the Members and the Province as a whole may not be misinformed.

Section 89 of the South Africa Act, 1909,¹ says:

“A provincial revenue fund shall be formed in every province, into which shall be paid all revenues raised by or accruing to the Provincial Council, and all moneys paid over by the Governor-General-in-Council to the Provincial Council. Such fund shall be appropriated by the Provincial Council by ordinance for the purposes of the provincial administration generally, or, in the case of moneys paid over by the Governor-General-in-Council for particular purposes, then for such purposes, but no such ordinance shall be passed by the Provincial Council unless the Administrator shall have first recommended to the Council to make provision for the specific service for which the appropriation is to be made. No money shall be issued from the provincial revenue fund except in accordance with such appropriation and under warrant signed by the Administrator: Provided that, until the expiration of one month after the first meeting of the Provincial Council, the Administrator may expend such moneys as may be necessary for the services of the Province.”

The conditions obtaining when this section was passed in 1909 have been altered only in the fact that, in addition to the moneys provided by the Union Government in the form of subsidy and assigned revenue, funds are also derived from local taxation imposed by the Council. This section has not been repealed, and until it is repealed the Administrator's recommendation for the appropriation of funds is necessary. The responsibility of making or withholding such recommendation rests with me, and I shall not evade my duty.

It may be mentioned that the Governor-General has a similar responsibility placed upon him by section 62 of the South Africa Act.

South Africa (Natal Mace).—The four Provinces constituting the Union of South Africa, were, before the consummation of such Union in 1910, four separate Colonies, each under its own form of “Responsible Government.” The principle of the Union Constitution being “unitary,” practically all the power, both executive and legislative, is

¹ 9 Edw. VII, c. 9.

vested in the Union Government and Parliament, the Provinces only retaining local and subordinate control. Each Province was given a Provincial Council, with representatives elected for a fixed period, at first for 3, but now for 5 years, from the same electoral divisions as those for the Union House of Assembly, except in the less populated Provinces of Natal and the Orange Free State. The chief executive official in each Province is the Administrator, the agent of the Union Government, who is also empowered to sit and speak in the Provincial Council, but has no vote. In other respects, he enjoys very much the position of a Lieutenant-Governor. The Presiding Member of the Provincial Council is the Chairman and there is also a Chairman of Committees. Otherwise the procedure and the ceremonial of the Provincial Councils is very much that of the old Colonial Parliaments, but the use of the Mace has not been retained, neither are the Chairman nor Clerks-at-the-Table bewigged, although they wear gowns and the Parliamentary uniform. With the exception of that of the Cape—whose Parliament Buildings were taken over by the Union Parliament—the Provincial Councils sit in the old Colonial Lower House. At the opening of last Session, however, owing to the keen interest taken in the subject by their Clerk—Mr. C. A. B. Peck—and following upon a unanimous resolution on the subject at the previous Session of the Council, the old Natal Parliament Mace was restored to the Natal Provincial Council and carried at the Opening Ceremony by the Chief Messenger of the Council, wearing the traditional black uniform of Parliament (there being no longer the office of Serjeant-at-Arms), followed by Mr. Chairman, his two sponsors and attended by the Clerk and Clerk-Assistant. The Mace, which is silver-gilt and a beautifully fashioned piece of workmanship, was made in Pietermaritzburg, the old Colonial and now the Provincial Capital, in 1902. On the facets below the Crown, orb and cross are the Royal Cypher of Edward VII, the arms of Natal—"two wildebeeste in full course at random all proper"—and the letters, "L.A.", denoting Legislative Assembly. Supporting the Crown, where it is attached to the body of the Mace, is skilfully fashioned leaf-work. The Mace is about 4 ft. 9 ins. long, and its restoration to its old place on the identical Natal Assembly Table was much appreciated by all attending the Opening Ceremony, as well as by the M.P.C.'s, who will watch its participation in the proceedings of the Council, to which it will add greater dignity.

South West Africa (Constitution).—Reference was made in our last issue¹ to Resolutions passed by the Legislative Assembly of this Mandated (C) Territory, to certain suggested alterations in the system of government, and to the appointment by the Union Government of a Commission, the terms of reference of which were there quoted. The Report² of the South-West Africa Commission which was laid on the Table of both Houses of the Union Parliament on June 12, 1936, covers 104 folio pages and contains nine chapters. Chapter I gives a description of the country, Chapter II a historical survey, and Chapters III and IV respectively deal with Non-Europeans and Europeans. The causes of dissatisfaction are contained in Chapter V, and the public finances of the Territory are dealt with in Chapter VI, while the effectiveness of the existing form of government is treated in Chapter VII.

The joint recommendations³ of the Commission, in so far as the Commissioners have been able to arrive at a common conclusion, after reference to the questions of the Non-European races, the naturalization of Germans, Bushmen reserves, agriculture, Ovamboland, the Hereros, mineral deposits and finance,⁴ are as follow:

401. After the most careful consultation and consideration, however, we regret that in regard to some of our recommendations we have been unable to find common ground. Our individual views we submit to Your Excellency⁵ in separate memoranda. Although we approach the matter from different angles we are in agreement that

- (a) The present form of government of the Territory is a failure and should be abolished.
- (b) There is no legal obstacle to the government of the Mandated Territory as a province of the Union subject to the Mandate.

The individual Memoranda of the three Commissioners are contained in Chapter IX. The first is that of the Chairman of the Commission, the Hon. Mr. Justice H. S. van Zyl, President of the Cape Division of the Supreme Court of the Union, who in recommending the repeal of the South West Africa Constitution Act,⁶ draws attention to the very unsatisfactory position which has arisen among the European inhabitants of the Territory, the German section of which, supported by persons in authority in Germany, have for the last 2 or 3 years

¹ JOURNAL, Vol. IV, pp. 22-28.

² Chapter viii.

³ *i.e.*, the Governor-General of the Union.

⁴ Union Act No. 42 of 1925.

⁵ U.G. No. 26, 1936.

⁶ *vide* §§ 393-400.

made no secret of their aspirations that South West Africa should revert to Germany in the near future. Mr. Justice van Zyl goes on to say:

That this will soon come to pass as a result of international negotiations in Europe is firmly believed, and openly said by them. Moreover, they have associated themselves with persons of position in Germany who openly make propaganda for the return to Germany of her former colonies. This brings into the local politics of the Territory an international question with which, in view of the Territory's position under the Terms of the Treaty of Versailles, and the Mandate,¹ the residents of the Mandated Territory should not concern themselves. All this has had a very disturbing effect upon the Union section, who see therein an attempt to go behind the Mandate. On the other hand, the leading political organization of the Union section has, since 1933, openly advocated the incorporation of the Territory in the Union as a fifth province subject to the provisions of the Mandate. This is resented by the Germans who regard it as the first step towards the annexation of the Territory by the Union.

Judge van Zyl, in paragraph 405 of the Report, remarks that as a result of the two opposing movements, the future of the Territory has become an all-absorbing question among the European population, in fact, that it is seriously interfering with the economic development and good government of the Territory, and that representative government has been converted into a farce. He further observes that if this situation is to be properly regulated, it will have to be taken charge of by the Union Government itself.

Dealing with the particular type of Mandate, Judge van Zyl observes² that there is no limit placed on the extent to which South West Africa may be administered as part of the Union, as long as it is kept sufficiently distinct from the Union to enable the Mandatory to furnish, in terms of Article 6 of the Mandate, the annual report to the Council of the League of Nations. After reciting certain facts in connection with the administration of the Territory, Judge van Zyl states:

426. In all the circumstances, I have come to the definite conclusion and I recommend that the Union should take direct charge of the administration of South West Africa and do so through the Union Parliament and the Union Ministerial Departments, *i.e.* that the Territory be administered as an integral part of the Union, that the Union Parliament legislate for it, that the Union Ministers, in and through their respective departments of State, assume in relation to South West Africa

Mandate C, League of Nations dated December 17, 1920

² § 413.

the same direct authority and functions as they do in relation to the Union, that provision be made for the election of members to represent South West Africa in the Union Parliament, that, as regards the subject matters which in the Union are delegated to the Provinces, provision be made to delegate such subject matters with such modifications as circumstances may require, to a local Assembly and Administrator with executive on lines similar to those obtaining in the provinces of the Union.

Judge van Zyl suggests,¹ if the disturbed state of the Territory makes it undesirable under present circumstances to institute a provincial legislature, that in any case, provision be made for the representation of the Territory in the Union Parliament, and he further recommends that:

429. An Administrator and a nominated Advisory or Executive Committee could, in the absence of a local legislature, take charge of the functions which would ordinarily vest in the Administrator and Executive Committee of a province while the local legislative functions could be exercised by the Governor-General-in-Council. My recommendations, of course, envisage that, subject to any necessary modifications, the Union Parliament and the Union Government respectively should take charge of all the functions which in the Union fall outside the scope of provincial authorities.

In the conclusion of his "Individual Memorandum" to the Report, Judge van Zyl recommends that when the disturbed political situation in the Territory has sufficiently improved to permit of co-operation between the European inhabitants for the development of the Territory, the desire of the Germans for greater language rights be sympathetically treated.

The Second Commissioner, the Hon. Mr. Justice F. P. van den Heever, in his Memorandum,² advocates the discontinuance of the present form of administrative and legislative government in the Territory, and the substitution of government by Commission, as provided for in the Schedule to the Union Constitution³ in regard to the transfer to the Union of any territory under the protection of His Majesty, such Commission to be appointed for 5 years and its members selected on the basis of their ability to represent the various industrial interests in the Territory, candidates being put forward to the Government by organizations representing farming, mining and commerce, thereby cutting across both racial and political divisions. It is also suggested that the Minister for External Affairs represent the interests of the Territory in the Union Parliament.

¹ Para. 427. ² §§ 434-478. ³ South Africa Act, 1909 (9 Edw. VII, c. 9).

The remaining Commissioner, Dr. J. E. Holloway, does not find himself in agreement with the recommendations of Judge van den Heever, and recommends that there should be closer administrative integration with the Union. He is not, however, in favour of delegating to the local Assembly the power of legislation upon such subject matters as have been assigned to Union Provincial Councils. Dr. Holloway, therefore, does not support the request of the South West Africa Legislative Assembly that the Territory be administered as a fifth province of the Union. He would rather see such subjects as Native affairs, land settlement, education, mining, administration of justice and police be integrated with the respective departments of the Union, with certain powers in regard to education vested in the Administrator of the Territory, the Union Department of Education only dealing with higher education. Dr. Holloway agrees with the suspension of the Territory's present Constitution until times when there is better feeling between the Union and German sections in the Territory, and that in the meantime such remaining subjects as agriculture, postal services, public works, roads and bridges, game preservation and other local government activities, none of which excite racial passions, should be reserved for the competence of a future local legislature and that in the meantime, while representative institutions are in suspense, they should be controlled by the Administrator, acting with the advice of a nominated advisory council and under the close supervision of the Union Government.

Early in December, the Union Government, after consideration of the Report of the Commission, issued a Declaration, in the form of a Press *communiqué*, concerning the administration of South West Africa, in which the Union Government, amongst other things, declared:

Although it is of the opinion that to administer the Mandated Territory as a fifth Province of the Union, subject to the terms of the Mandate, would not be in conflict with the terms of the Mandate itself, it feels that sufficient grounds have not been adduced for taking such a step.

* * * * *

The Mandate has been conferred on the Union irrevocably under a solemn Treaty and the Union cannot legitimately be deprived of the Territory against its wish. The Union Government is not prepared to consider the possibility of the transfer of the Mandate to another power, and wishes to assure the

people of South West Africa, that it has as little thought of abandoning the Mandate as it has of abandoning its own Territory.

* * * * *

To its regret the Union Government is bound to place on record, that it has been brought under the impression that a considerable part of the German section of the population, whether Union Nationals or not, is, either by conviction or through moral pressure, intimidation, or infringements upon the liberty of the individual, grouped in a separate political organization, in which those who wish to use it as a means of creating and maintaining a state of affairs favourable to a return of the Territory to Germany hold sway . . .

* * * * *

Furthermore, the doctrine is generally preached that the Germans who have become Union Nationals under the automatic naturalization are entitled to their full German Nationality within the Territory. This attitude is not only devoid of any legal justification but is also directly in conflict with the spirit and letter of the London Agreement of 1923 and the provisions of the Naturalization Act of 1924.

* * * * *

The Union Government has, therefore, decided to render it impossible for aliens to become, or to be, members of political organizations, or of such public bodies and other organizations in regard to which the Administrator considers it undesirable that aliens should be members.

* * * * *

The Union Government cannot tolerate any unlawful infringement upon the liberty of the person and is determined to protect the individual against unlawful pressure or compulsion in the exercise of his public or private rights.

* * * * *

The Government also does not recognize the validity of any claim to double nationality within the Territory. This claim has no foundation either in law or in fact.

* * * * *

The Union Government demands the full and undivided loyalty of its nationals and will be bound to take all available measures against acts which are incompatible with such loyalty.

* * * * *

Already in 1932 the Union Government indicated that it was prepared to introduce in the Union Parliament supplementary legislation which might be required to give full effect to an Ordinance of the Legislative Assembly of the Mandated Territory recognizing German as an official language in South West Africa. This attitude has not changed.¹

* * * * *

¹ A Draft Ordinance was published in *Official Gazette Extraordinary* (p. 7914) of S.W. Africa, of April 25, 1932, providing that the English, Dutch and German languages shall be the official languages of the Territory and be treated on a footing of equality and possess and enjoy equal freedom, rights and privileges.

The Union Government has also considered the wish of the German section that the law on the naturalization of aliens be amended by reducing to 2 years the period of residence in the Territory required by law.

The Union Government has also considered the question in what manner the finances of the Territory can be placed on a sound basis in order to enable the people of the Territory to balance the budget without having regularly to approach the Union for loans to cover deficits.

In the closing paragraph of the *communiqué*, the Union Government makes the following appeal:

Inasmuch as no part of the population has, up to now, been called upon, or is expected in the future, to relinquish any spiritual asset which is essential to its existence as a separate cultural group of the population, the Government would finally appeal to all sections of the population of the Territory to give their earnest consideration to the matters in regard to which they have received a share in the government of the Territory, to co-operate in a spirit of devotion to the interests of the whole population in promoting the welfare of the Territory and to abstain from propagating ideas as to the abolition of the Mandate, in whatever direction.

A Proclamation upon South West African affairs by the Governor-General of the Union, dated March 27, was then issued in the English, Afrikaans and German languages by the Union Government.¹ After reciting certain definitions, the Proclamation empowers "the competent authority" by notice in the *Gazette* to declare what are public bodies or political organizations, and provides that:

no person who is not a British subject shall unless the "competent authority" has otherwise ordered be eligible for membership of any "public body," and that any such person who is such member at the "declaration date," unless the "competent authority" has otherwise ordered, cease to be a member thereof.²

Then follow provisions dealing with office bearers of public bodies, and persons addressing meetings thereof or voting upon any matter submitted thereto.³ Neither may any person who is not a British subject, except with the permission of the "competent authority," become a member, office-bearer or employee in the Territory of any political organization after the "declaration date," or remain one after the "fixed date."⁴ Similar provisions as above in regard to "public bodies" are applied to political organizations.

¹ No. 51, 1937 (Union), S.W.A. *Official Gazette Extraordinary*, April 2, 1937.

² *Ib.*, s. 3 (i).

³ *Ib.*, s. 3 (2) (3).

⁴ *Ib.*, s. 4 (1).

Any British subject taking within the Territory any oath, etc., or promise, to be faithful or bear allegiance to, or obey the orders of:

- (a) any sovereign or head of state other than His Majesty the King, or
- (b) the Government or any member or official of the Government or any state other than the Union of South Africa; or
- (c) any foreign political organization or any office-bearer, member or employee thereof

is guilty of an offence.¹

The Undesirables Removal Proclamation is amended in certain respects.² Offences under sections 3, 4 and 5 range from a fine not exceeding £100, or imprisonment for not exceeding one year, or to such imprisonment without the option of a fine or to both such fine and such imprisonment.³

By Government Notice No. 61, dated April 17, 1937⁴ issued under section 2 of the abovementioned Proclamation, certain stated organizations are declared "political organizations."

In regard to the Report of the Commission, which, in addition to being a most important official publication, is also of international interest, it is to be regretted that it has no index; reference to its provisions is thus a laborious process and may discourage many from studying this valuable and carefully prepared document.

One cannot do better, in conclusion, than quote a paragraph from the Declaration by the Union Government concerning the Administration of South West Africa, officially made to the South African Press, as appearing in the *Windhoek Advertiser* of December 12, 1936:

Although the Union Government is of the opinion that to administer the Mandated Territory as a fifth Province of the Union, subject to the terms of the Mandate, would not be in conflict with the terms of the Mandate itself, it feels that sufficient grounds have not been adduced for taking such a step. It is, moreover, not convinced that the existing form of administration does not answer its purpose, or that the administration of the Territory as a Province of the Union would contribute materially to that greater measure of security which the Union section desire. The Union Government also very much doubts whether any of the other solutions which have been suggested would give greater satisfaction than the existing form of administration.

Southern Rhodesia (Constitutional Amendment).⁵ — A Southern Rhodesia Command Paper was published in June,

¹ *Ib.*, s. 5.

² *Ib.*, s. 7.

³ *Ib.*, s. 6.

⁴ S.W.A. *Official Gazette Extraordinary*, April 17, 1937.

⁵ See also JOURNAL, Vol. IV, 32-33.

1936, containing a Despatch of May 15, 1936, by the Governor of Southern Rhodesia to the Secretary of State for Dominion Affairs, and 8 Annexures dealing with the amendment of the Constitution and other draft legislation incidental thereto. As will be seen from the previous treatment of this subject, and the motion moved thereon on May 13¹ in the Legislative Assembly, it was suggested that certain restrictions and reservations should be removed from the Constitution Letters Patent of 1923, etc., and the Despatch shews in how far the Imperial Government is prepared to meet these requests. Most of these Constitutional changes deal with Native lands and administration and the transfer of certain powers in the Constitution vested in the High Commissioner² for South Africa, to the Governor-in-Council, Secretary of State, etc. It is, however, with these Constitutional amendments affecting more closely Parliament itself that we have here to deal.

It was agreed to by the Imperial Government that Section VII (Reserved Bills) of the Royal Instructions of September 1, 1923, be amended by the deletion of:

Head 1, any law for divorce.

Head 4, any law imposing differential duties.

The following is the extent to which the Imperial Government is prepared to accede to the desires of Southern Rhodesia to remove certain provisions from the Constitution, etc.:

23 (2); to remove the requirement for the subjection to the approval of the Governor-in-Council of Standing Rules and Orders made by the Legislative Assembly for the conduct of its business.

54 (1); to remove the present restriction which debars such Assembly from passing any law, vote or resolution which would have the effect of imposing, altering or repealing any rate, tax or duty, unless such law, vote or resolution had been first recommended to the Assembly by message of the Governor. Such requirement is to be retained, however, in respect of the origination or passing of any vote, resolution, address or Bill for the appropriation of any part of the Consolidated Revenue Fund or of any tax or impost to any purpose.

A Bill, entitled the Constitution Amendment Act, 1937,³ was introduced into the Legislative Assembly by the Prime Minister (Hon. G. M. Huggins, F.R.C.S., M.P.) on the last day of the

¹ C.S.R. 26, 1936.

² This Imperial Government Official acts in 2 capacities, namely as High Commissioner in the Union of S.A. for H.M. Government in the U.K., and as High Commissioner, possessing legislative authority over the Native Territories of Basutoland, Bechuanaland Protectorate and Swaziland, with certain powers in respect of Northern and Southern Rhodesia.

AB, 2, 1937.

Session early in 1937 and read the First Time, the main provisions of which are to amend the Constitution¹ by repealing sec. 23 (2) requiring the Rules and Orders of the House to be approved of by the Governor-in-Council; to repeal sec. 54 (1) and substitute the following:

(1) The Legislative Assembly shall not originate or pass any vote, resolution, address, or bill for the appropriation of any part of the Consolidated Revenue Fund or of any tax or impost to any purpose unless such appropriation has been recommended by message from the Governor during the Session in which such vote, resolution, address or bill is proposed.

to transfer the authority conferred on the High Commissioner under sec. 58 to the Governor-in-Council; to amend sec. 62 by the addition of the definitions "Board of Trustees" and "Native," the latter to mean—

any member of the aboriginal tribes or races of Africa or any person having the blood of such tribes or races and living among them and after the manner thereof.

and, to repeal the Native Reserves Augmentation Act, 1925, and the High Commissioner's Title Act, 1935.

Amalgamation of the Rhodesias.—At the opening of the Third Session of the Legislative Council of Northern Rhodesia, on October 10, the Governor, when referring in his Address to the motions² moved earlier in the year in regard to the proposed amendment of the Constitution and amalgamation of the two Rhodesias, and the Victoria Falls Convention,³ communicated the following decision⁴ in regard to the subject by the Secretary of State:

"The question of the amalgamation of the territories is governed by the decision announced by His Majesty's Government in 1931, which was only taken after a most thorough examination of the whole problem, and also after consultation with members of the Parliamentary Parties then in opposition. Although it was made clear in that announcement that His Majesty's Government did not wish to reject the idea of amalgamation in principle, if circumstances should justify it at a later date, the announcement was definitely intended as settling the question for some time to come, and I do not feel that during the period of five years which has elapsed there has been such a material change in conditions as would justify re-consideration of the decision reached after so much thought in 1931. A further point that arises is that, although there may be a body of opinion among the European agricultural settlers in Northern Rhodesia which favours amalgamation, the unanimity which was reached

¹ Letters Patent, 1923.

² *Ib.*, 31.

³ See JOURNAL, Vol. IV, 30.

⁴ N.R.L.C. Deb., 1936, cols. 2-3.

at the Victoria Falls Conference was obtained only on the basis of a constitution conferring the right of "complete self-government," and I understand that there are some members of the Legislature of Southern Rhodesia who would definitely reject the idea of amalgamation on any basis short of this. The attitude of His Majesty's Government to this suggestion so far as it relates to Southern Rhodesia will have been made clear by the recent publication of Sir Herbert Stanley's despatch relating to the proposed amendment of the Southern Rhodesia Constitution."

On October 29, the following motion was moved¹ by the Hon. L. F. Moore² (elected Unofficial Member representing the Livingstone and Western Electoral Area):

That this Council deplores the Secretary of State's rejection of the proposals for their amalgamation submitted by the peoples of Northern and Southern Rhodesia.

Upon being put to the vote, the question was negatived, the voting being Ayes, 7; Noes, 9, all the Unofficial Members voting "aye" and the Official Members "No."³

Northern Rhodesia (Central African Federation).—On October 29, 1936,⁴ the following motion was moved in the Legislative Council of Northern Rhodesia by Lieut.-Colonel S. Gore Browne, D.S.O. (*Elected Member for the Northern Electoral Areas*):

That this Council requests the Government of Northern Rhodesia to consider the re-organization of this Territory so as to make federation with Southern Rhodesia and Nyasaland possible in the event of these two countries desiring it.

The proposal is for a common form of government embracing also the adjoining territories of Southern Rhodesia and Nyasaland, the former being a "Responsible Government" Colony and the latter a Protectorate, by a re-orientation of certain parts of the Protectorate of Northern Rhodesia, by which its Central Province (*i.e.*, the railway strip) would become part of Southern Rhodesia under its present form of government, the Northern and Eastern Provinces transferred to Nyasaland, and the North-Western and Barotse Provinces to remain as they are, but under the control of a Resident Commissioner. The seat of this Federal Government would be Lusaka, the new capital of Northern Rhodesia. The Constitution of this new federal body, it is proposed, should be an Executive Council, on which the three Territories of Southern Rhodesia, Northern Rhodesia and Nyasaland would be represented, this Council

¹ *Ib.*, cols. 268-286.

³ Leg. Co. Min., October 29, 1936.

² Knighted 1 February, 1937.

⁴ N.R.L.C. Deb., cols. 245-268.

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¹ *Ib.*, cols. 268-286.

² Knighted 1 February, 1937.

³ Leg. Co. Min., October 29, 1936.

⁴ N.R.L.C. Deb., cols. 245-268.

to deal with such subjects as defence, communications, posts and telegraphs, customs research and civil aviation.

After debate, the motion was by leave withdrawn.

India¹ (Constitutional).—During the year under review in this issue, further steps were taken in connection with the putting into operation of part of the new Constitution for India.² Conferences have been held between representatives of the Government of India and the Provincial Governments in preparation of the ground for Provincial Autonomy. Draft Orders were submitted to both Houses of the Imperial Parliament in the form of humble Addresses to His Majesty, setting up the new Provinces of Sind and Orissa³ as recommended by the Joint Select Committee of the Lords and Commons on Indian Reforms. These were the forerunners of many other draft Orders under the Government of India Act, 1935, dealing with the details in connection with the new Constitution and left by it to be dealt with in this manner.

In March, the Indian Delimitation Committee issued its Report.⁴ Variations in this Report are given in a Memorandum by the Secretary of State for India.⁵

Orders additional to those abovementioned were issued covering—Excluded and Partially Excluded Areas;⁶ Provincial Legislative Assemblies, Provincial Legislative Councils and Scheduled Castes;⁷ Commencement and Transitory Provisions, Distribution of Revenues and Explanatory Memorandum, etc.,⁸ and the Provincial Elections, Corrupt Practices and Election Petitions,⁹ and many other subjects not directly affecting the Legislatures.¹⁰

Provincial Autonomy and the separation of both Burma and Aden¹¹ from India were all dated to take effect on April 1, 1937. The Federal Part (II) of the India Constitution, as explained in the last issue of the JOURNAL,¹² is to come into force later.

An important document upon which much of the financial procedure in connection with the inauguration of the Con-

N.B.—Superseding Statutory Rules and Orders are shown in the footnotes in italics.—[Ed.]

¹ See also JOURNAL, Vol IV, 61-99.

² 26 Geo. V, c. 2.

³ S. R. & O., 164, 165 (1936).

⁴ ("Hammond" Committee) Cmd. 5099, 5100 (1935-6).

⁵ Cmd. 5133 (*ib.*).

⁶ Cmd. 5064 (*ib.*); S. R. & O., 166 (1936).

⁷ Cmd. 5133 (*ib.*); S. R. & O., 415, 416 (*ib.*).

⁸ Cmd. 5181 (*ib.*); S. R. & O., 672, 676 (*ib.*).

⁹ S. R. & O., 675 (1936).

¹⁰ S. R. & O. (1936), 85, 106, 844, 860, 1033.

¹¹ Cmd. 5222 (1935-36); S. R. & O., 1031 (1936).

¹² Vol. IV, 98.

stitution for India is based, is the Report of the Indian Financial Enquiry,¹ and other papers.²

In regard to the Accession of the Indian States, the provisional draft of the Instrument of Accession to be executed at the option of every individual Ruler of an Indian State published in 1935 (Cmd. 4843) has been revised since the passing of the new Constitution for India and discussions have taken place between representatives of the Viceroy and the Indian Princes. Committees of the Chamber of Princes and the Indian State Ministers, the most important of which have been the Hydari Committee and the Constitutional Committee, the latter under the Chairmanship of H.H. the Maharajah of Patiala, since elected Chancellor of the Chamber of Princes, have also made investigation into the many important subjects in connection with the accession of Indian States to the Federation, such as: the Ruler's rights and obligations in relation to the Crown, Federal powers, the sovereignty of State Rulers, legislation and finance. The Princes have also appointed legal authorities to advise them.

Draft Instruments of Instruction to Indian Governors have formed the subject of Address by the Lords and Commons to the King.³

In view of the magnitude of the task of putting into motion the new Constitution for India, an outline of which was given in our last issue,⁴ it is not surprising that so many preparations have had to be made. Quite apart from many important questions of administration, in British India alone, there are nearly 2,000 constituencies with a total of 30,000,000 voters (of whom 5,000,000 are women). However, so much is still transpiring in 1937, in regard to the introduction of Provincial Autonomy and the Accession of the Indian States, that it would be encroaching upon the field of next year's Volume of the JOURNAL to refer to such recent events now. In any case, however, it is quite impossible to discuss these problems, or even to give more than a mere finger-post to them in our JOURNAL. Those desiring to study them can do so by reference to the authorities given in the footnotes to the Article on the India Constitution in our last issue,⁴ as well as to those given hereto, and by reading the various debates in the Lords and Commons, all of which will afford the constitutional student much information of the greatest value and interest.

¹ ("Niemeyer" Report) Cmd. 5163, 5181 (1935-36).

² *S. R. & O.*, 1033 (1936).

³ Cmd. 4805 (1935); Com. Paper 1, 1936.

⁴ Vol. IV, 76-99.

India (Order in Debate).—During the debate upon a motion for adjournment of the House in the India Legislative Assembly on September 2,¹ for the purpose of censuring the Government, the closure was moved, but not accepted by the Chair, the President pointing out to the Treasury Benches that if any Member of the Government wanted to speak, it was time they should rise and take an early part in the debate. Whereupon, a number of Members loudly crying, “Shame, Shame,” walked out of the House as a demonstration against the Chair.

On the following day² the President (the Hon. Sir Abdur Rahim) before the commencement of Government business, made a statement to the House with reference to the demonstration and also said that he had received in his Chambers 2 or 3 letters from Members of one of the Parties calling in question his decision on the admissibility of questions or other Rulings, couched in very disgraceful language. Upon which certain Members called out “Shame,” which expression was ruled out of order by the President as not being Parliamentary. The President pointed out that if there was any desire to question his Ruling there was a proper method of doing so, for which he would give an early opportunity.

On September 4,³ the Leader of the Opposition (Mr. B. J. Desai, *Bombay N. Division Non-Muhammadan Rural*) made reference to the President’s Ruling, explaining that the conduct of the Members who walked out of the House on such occasion was not intended to express any personal want of confidence in the President, but to express an active protest against the Government and a feeling of disappointment at being prevented from the defeat of a measure, owing to the question having been talked out, by interruption at 6 o’clock under the Standing Order.

India (Urgency Adjournment Motions).—On September 3⁴ a Member (Mr. Satyamurti—*Madras City, Non-Muhammadan Urban*) desired to move an urgency adjournment motion, but it was pointed out by the President that the discussion of the subject had been disallowed by the Governor-General under Rule 22 (2), “on the grounds that the moving of such a motion would be detrimental to the public interest or that it is not primarily the concern of the Governor-General-in-Council.”⁵ A discussion then arose in regard to the interpretation of the Rules and Standing Orders, at the con-

¹ VI India Leg. Assem. Deb. No. 3, 41.

² *Ib.*, No. 331.

³ *Ib.*, No. 5.

⁴ *Ib.*, No. 4.

⁵ *Ib.*, No. 5.

clusion of which the President said he would consider the point raised as to whether the House had the right to discuss a question, while still a motion, before the operation of the Governor-General's disallowance.

On the following day¹ the President gave his Ruling, reversing a previous Ruling, which was to the effect that the proper time for the disallowance order of the Governor-General to be applied was after the raising of the subject had received the consent of the President. The President also drew attention to certain discrepancy between paragraph 49 of the Manual and I.L. Rule 22.

Another urgency adjournment motion was moved on September 16² by a Member, namely, to consider "the unsatisfactory attitude of the Government of India in respect of the freedom of individual Members of Government to express personal opinions, out of accord with the accepted policy of the Government." Objection was taken to the question being a proper one for such a motion and the President undertook to give his Ruling on the following day. On September 17³ the President ruled that the subject could not be considered as a matter of urgency and that therefore the motion was out of order. In the Ruling the President also pointed out that an answer to a question in itself, because it is considered unsatisfactory, furnishes no ground for a motion for adjournment of the business of the House, but whether a matter is a definite matter of urgent public importance is to be judged with reference to the question whether the subject-matter of the question and the answer satisfies the requirements of a motion for adjournment.

Burma.⁴—It is not yet wholly possible to dissociate Burma from India in regard to documents of reference, as the separation only came into force on April 1, 1937.

On June 11, in reply to a Question⁵ in the House of Commons, the Prime Minister (Rt. Hon. Stanley Baldwin) said that the Government have come to the conclusion that following the separation of Burma from India, there should be a separate Secretaryship of State for Burma and also a new office of Parliamentary Under-Secretary of State for Burma, but for reasons of practical convenience such offices will, for the present, be held by the same persons as hold the similar offices in regard to India, and the Burma Office will be housed at the India Office.

¹ *Ib.*, No. 5. ² VII India Leg. Assem. Deb., No. 2. ³ *Ib.*, No. 3.

⁴ See also JOURNAL, Vol. IV, 100-103. ⁵ 313 H.C. Deb. 5. s. 401.

Many of the Parliamentary and administrative actions which were taken in regard to the introduction of the new Constitution for India were also taken in regard to the introduction of that for Burma.¹ The Delimitation of Constituencies was dealt with in the "Hammond" Report.² Other official publications covered such subjects as the Senate and House of Assembly Elections,³ and Commencement and Transitory Provisions.⁴ Orders were issued in regard to the House of Assembly and Senate Elections,⁵ Corrupt Practices and Election Petitions,⁶ Karen Hill Tracts,⁷ and India and Burma Income Tax Relief.⁸ The new Legislature for Burma did not meet until 1937.

Malta (Constitutional).—The changing phases of the Constitution of Malta during the last few years have been dealt with in previous issues of the JOURNAL.⁹ During the year under review in this issue, however, a still greater change has taken place, for, consequent upon the passing, by the Imperial Parliament, of the Malta (Letters Patent) Act,¹⁰ in July, 1936, Letters Patent dated the 12th of the following month have been issued revoking the original Malta Letters Patent and Royal Instructions, both of April 14, 1921, the amending ones of 1933 and 1934 and those of March 18, 1936.¹¹

The Bill for the Malta (Letters Patent) Act abovementioned was initiated in the Lords, and in moving the Second Reading on May 5 Lord Plymouth (*Parliamentary Under-Secretary of State for the Colonies*) said¹² that it was intended that the form of government to be set up in Malta would be on Crown Colony lines, and that the Imperial Government proposed, as soon as the Bill was passed, to take the first step by establishing an Executive Council comprising together, with officials, a number of nominated unofficials. It was hoped in this way to associate with the Government a number of Maltese of standing and experience of local affairs, which would provide a channel through which unofficial opinion might be expressed in the day-to-day business of administration. The Imperial Government intended that this Constitution should be of more than an interim and provisional character. "After the vicissitudes of the last few years," continued Lord Plymouth,

¹ 26 Geo. V, c. 3.

² Cmd. 5101 (1935-36).

³ Cmd. 5133 (1935-36); S. R. & O., 401 (1936).

⁴ *Ib.*, 5181; S. R. & O., 673 (1936). ⁵ S. R. & O., 402, 401 (1936).

⁶ *Ib.*, 674. ⁷ *Ib.*, 1032.

⁸ See Vols. I, 10-11; II, 9; III, 27 and IV, 34.

¹⁰ 26 Geo. V and 1 Edw. VIII, c. 29.

¹¹ L.P., 1936, 1.

¹² 100 H.L. Deb. 5. s. 744 to 784.

“ the Island’s greatest need is a rest from elections and political dissensions.” In his reply to the debate on the Second Reading, on the same day, his Lordship stated :

It was not the intention of the Government to withhold permanently representative institutions from the Maltese people. . . . They felt they were quite entitled to look for the re-establishment of representative government, though not responsible government, in the course of time.

In moving the ~~the~~ Second Reading of the Bill in the Commons on July 1, the Rt. Hon. W. Ormsby-Gore (*Secretary of State for the Colonies*) said¹ :

The Bill has two main objects. The first is to restore the powers which the Crown possessed relating to the Constitution of Malta, from the time when Malta became of its own wish and volition a British Colony more than 130 years ago until the year 1921—to restore to the Crown its powers to change the Constitution of Malta from time to time, if circumstances seemed to dictate that it would be wise to do so, by Letters Patent. The second object is to validate all Ordinances promulgated by the Governor of Malta with the approval of His Majesty’s Government in the United Kingdom since the second suspension of the 1921 Constitution, which suspension took place in the autumn of 1933.

Under the new Letters Patent of August 12, 1936, which are printed in both English and Maltese and published by the Government Printing Office, Malta, the Government of Malta and its Dependencies is vested in a Governor, to whom certain Instructions of the same date are issued.² The Island, in addition to being a naval base, is also an important fortress, and the Governor has usually been a retired General.³ The office of Lieutenant-Governor is continued.⁴ An Executive Council is constituted⁵ to advise the Governor, who is empowered⁶ to make laws for the peace, order and good government of Malta. Power to legislate is also reserved to the King-in-Council.⁷ Subject to the Letters Patent, all laws, etc., in force in Malta at the date such Letters Patent came into operation, are to remain in force, except so far as they may be repealed, amended or affected by other legislation.

Executive.—The Royal Instructions of August 12, 1936, provide⁸ that the Executive Council shall consist of the persons occupying the respective offices of Lieutenant-Governor, of Legal Adviser to the Governor, of Treasury Counsel, of Treasurer and Secretary to the Government, as *ex officio*

¹ 314 H.C. Deb. 5. s. 287-540.

² See also Cmd. 3993, pp. 95, 96.

³ *Ib.*, 7.

⁴ *Ib.*, 15.

⁵ Letters Patent, 1936, 2 and 3.

⁶ L.P., 1936, 5.

⁷ *Ib.*, 17.

⁸ R.I. 4.

members, and such other persons, not less than 3, to be styled Nominated members, appointed for 3 years but eligible for reappointment. On the 2nd September, it was announced in Malta that the Governor had nominated the following as Official Members, Vice-Admiral French as representative of the Dockyard, the greatest employer of labour in Malta, and Captain Ramage, besides the following 5 Unofficial Members: Baron Depiro, Mr. Edgar Arrigo, Professor de Bono and Doctors Boffa and Mifsud Bonnici, the latter a former Minister of the Treasury. Persons may also be summoned by the Governor on special occasions as Extraordinary Members, and provision is made for the filling of casual vacancies. The seat of an Official member of the Executive Council becomes vacant directly he ceases to hold office in the Colony.¹ The Executive Council is summoned by the Governor, who presides at its meetings. There are also the usual provisions as to quorum (from which the Governor or member presiding is excluded).

Minutes, etc.—The Governor is to consult his Executive, except in cases where H.M. Service would sustain material prejudice, or when matters are too unimportant, or too urgent to admit of delay by such consultation.² The Governor alone is entitled to submit questions to the Executive Council, but should he decline to do so, when requested by any Executive Councillor, such Councillor may have the facts recorded in the Minutes.³ The Governor may act in opposition to advice tendered by his Executive, but must then fully report the matter to Whitehall by the first convenient opportunity, stating the grounds and reasons of his action.⁴

The Governor is also empowered, in the King's name, to make and execute, under the Public Seal, grants or dispositions of land in Malta.⁵ He is also enjoined to communicate to the Executive Council any Royal Instructions issued to him, which he may find convenient to impart.⁶

An Ordinance of special constitutional significance was passed since the promulgation of the new Letters Patent, namely, the Executive Powers Ordinance,⁷ which, to quote the official "Objects and Reasons" given at the foot of Ordinances, provides:

- (a) that the powers which, under any law, are vested in Ministers, be now vested in the Governor (with power of delegation);

¹ R.I. 5 and 6.

⁵ L.P., 1936, 8.

² R.I. 8-11.

⁶ R.I. 7.

³ R.I. 12.

⁷ No. XIX of 1936.

⁴ R.I. 13.

- (b) that the powers which under any law are to be exercised by the Governor-in-Council, be now exercised by the Governor-in-the-Executive-Council as constituted by the new Letters Patent;
- (c) that the expenditure of money and the execution of works in certain cases shall take place on the authority of the Governor in the Executive Council, former Parliament procedure, where mentioned in any existing law, being incompatible with the Letters Patent, 1936.

Legislation.—Laws, which are styled Ordinances, are enacted by and in the name of the Governor, and must be published in the *Malta Gazette* in both the English and Maltese languages. Certain rules and regulations, however, are imposed upon him under which Ordinances are to be drafted and enacted. They are also required to be so published in draft form for at least one month before enactment, unless in the opinion of the Governor it is in the public interest that such publication be dispensed with.¹ There are certain subjects, however, upon which the Governor may not legislate without permission from Whitehall, namely, Ordinances dealing with currency, naturalization of aliens, the discipline or control of H.M. Forces, affecting the Royal Prerogative, prejudicing the rights or property of British subjects not residing in Malta, the trade and shipping of any British Dominion; affecting Treaties, making grants of land or money to himself, dealing with provisions to which the Royal Assent has been refused, or which have been disallowed.² The Governor is, however, empowered in case of urgent necessity to enact Ordinances, reporting the circumstances to Whitehall later.

All laws are to be printed in the *Malta Gazette* both in the English and Maltese languages and enrolled in the office of the Registrar of the Superior Courts. In case of any conflict between the English and Maltese texts of any law, the former is to prevail.³

Clause 16 of the new Letters Patent provides for the exercise by the King, of his power of disallowance in regard to any law enacted, notice of which the Governor is required to publish in the *Malta Gazette*, and a certificate thereof enrolled in the office of the Registrar of the Superior Court of Malta, and every law so disallowed ceases to have effect upon the publication of such notice.

¹ R.I. 14.

² R.I. 15.

³ L.P., 1936, 19, 20 (3).

Religion.—Full liberty of conscience and the free exercise of their receptive modes of religious worship are accorded to all persons in Malta, and no person may be subjected to any disability or excluded from holding any office by reason of his religious profession.¹

Language Rights.—The history of Malta is veiled in antiquity. The Phœnicians, Carthaginians, Romans, Arabs and Normans have each in turn ruled the island, and in later years the Turks and Aragonese until the establishment of the Order of the Knights of Malta about 1500. Nelson blockaded Malta in 1799 and 3 years later it was returned to the Order of St. John under the Treaty of Amiens. Great Britain came into possession of Malta under the Treaty of Paris in 1814, and in 1858 the rule of Military Governors was established. Therefore the foundation of the Maltese language is Arabic influenced by Phœnician, with later supplementation of Italian to the older forms.

Under the Letters Patent the English and Maltese languages are made the official languages. English is made the official language of the administration and Maltese that of the Courts of Law, but the Governor may provide by Ordinance for the use of English in legal proceedings where any party or any accused person does not speak Maltese as the principal language to which he is accustomed. Any law in force at the time of the coming into operation of the new Letters Patent of which there is no Maltese text, must be translated into Maltese, the English in the meantime being the official text.²

Since the promulgation in Malta on 2nd September, 1936, of such Letters Patent by Governor's Proclamation No. XXI of 1936, certain Ordinances³ have been enacted dealing with language reforms, too lengthy to be gone into here, but which are well worthy of careful study by those specially interested in the subject. The use of the two languages in the old Malta Parliament has already been dealt with.⁴

General.—The new Letters Patent also contain provisions in regard to the Governor's Oath, his Commission and deputy,⁵

¹ *Ib.*, 21.

² L.P., 1936, 20.

³ The Criminal Laws Amendment (No. 2) Ordinance (No. XX of 1936), the Laws of Organization and Civil Procedure Amendment Ordinance (No. XXI of 1936); the Notarial Profession and Notarial Archives Amendment Ordinance (No. XXIV of 1936); and the Public Educational Institutions (Teaching and use of English and Italian languages) (repeal) Ordinance (No. XXV of 1936).

⁴ See JOURNAL, Vols. II, 9; and IV, 112-113.

⁵ L.P., 1936, 4, 14, 22, and 23 and R.I. 23 and 24.

the Public Seal,¹ appointments,² judges,³ dismissal and suspension of officers,⁴ pardon,⁵ and succession to Government.⁶

The Royal Instructions of the same date which revoke those of April 14, 1921, also contain detailed provisions in regard to the office of Governor,⁷ and the annual Blue Book.⁸

Power to revoke, alter or amend the present Letters Patent is reserved to His Majesty under Clause 24 thereof.

Motion in Lords.—On December 2, Lord Strickland in the House of Lords “moved to resolve”:⁹

That this House deplores delay in implementing obligations to respect representative institutions in Malta and regrets the too elastic interpretation given to the Malta (Letters Patent) Act, 1936, which only gives power to revoke and amend Letters Patent, but does not specify, as is necessary in law, any power to withdraw representative institutions or to issue enactments irreconcilable with the Common Law of the Empire.

Lord de la Warr (*Parliamentary Under-Secretary for the Colonies*) stated that while the Government did not recognize that they were under any obligation in regard to representative institutions in Malta, they did not regard the present Constitution as anything other than an interim measure, and it was their most earnest hope that in course of time, as and when circumstances permitted, some more liberal form of constitution compatible with the admittedly high level of development and culture of the Maltese people might be evolved. There was no justification for the accusation of delay in introducing a more liberal form of Constitution in Malta, and the Government were quite unable to agree that they had been guilty of the breaches suggested in the motion. The motion was negatived.

*Newfoundland.*¹⁰—On April 21¹¹ the Question was asked in the House of Commons whether the Minister for Dominion Affairs had any statement to make on the position of affairs in Newfoundland. The Minister replied that a report¹² by the Commission was recently presented to both Houses of Parliament.

Fiji (Constitutional Reform).—In reply to a Question in the House of Commons, on July 20,¹³ the Secretary of State

¹ L.P. 6. ² *Ib.*, 9. ³ *Ib.*, 10. ⁴ *Ib.*, 11. ⁵ *Ib.*, 12.

⁶ *Ib.*, 13. ⁷ R.I. 1-3. ⁸ R.I. 22. ⁹ 103 H.L. Deb. 5. s. 564.

¹⁰ See also JOURNAL, Vols II, 8-9 and IV, 35.

¹¹ 311 H.C. Deb. 5. s. 8.

¹² Cmd. 5117. This report, however, dealt only with trade and revenue.

¹³ 315 H.C. Deb. 5. s. 34, 35.

for the Colonies (Rt. Hon. W. Ormesby-Gore) said, that as a result of representations made to him, he had decided to recommend to His Majesty that the Legislative Council should be reconstituted to consist of the Governor, 16 Official Members, 5 European Members (3 elected on a communal franchise and 2 nominated); 5 Fijian Members (all to be selected as at present)¹; and 5 Indian Members (3 elected on a communal franchise and 2 nominated. The life of the present Legislative Council is to be prolonged until, but not later than, the 14th July, 1937, as fixed by Proclamation by the Governor.



New Royal Cypher.—The design here shown is that of the new Royal Cypher, as approved by the King, used by all departments of State and public bodies and usually appearing on regimental colours, standard guidons, badges, arms and appointments, Parliamentary chairs and in any new internal and external decorations.

¹ With acknowledgments to *The Times* of December 29, 1936.

II. THE DECEMBER CRISIS

BY

AN AUTHORITY ON CONSTITUTIONAL LAW¹

SHAKESPEARE has something apt for every situation. In the Third Part of "Henry the Sixth" he makes a King Edward ask his brothers, "You'd think it strange if I should marry her?" Whereto the Duke of Gloucester replies, "That would be ten days' wonder at the least." The ten days' crisis of last December, arising from another King Edward's marriage project, has now passed into history. The history must be left to the historian; the moral to the moralist. Meanwhile it may be useful to record certain aspects in their relation to Parliamentary machinery and constitutional practice.

The right of interpellating Ministers is so familiar a characteristic of democratic assemblies that we may easily overlook its twofold value. It serves not only to saddle the Executive with responsibility, but also to satisfy the public thirst for definite news in times of uncertainty. On Tuesday, December 1st, an English Bishop² discussed in the domestic atmosphere of a diocesan conference the religious implications of the Coronation ceremony. Next day some of the provincial newspapers in Britain, breaking at last an honourably self-imposed silence about rumours long current in private, attributed to a passage in his speech an allusive interpretation whereof neither the speaker nor his audience had been conscious. On Thursday, December 3rd, the papers in London and elsewhere gave prominence to King Edward's matrimonial intentions. In the general bewilderment, the right to put a question in Parliament was naturally seized upon. On the Thursday afternoon the Leader of the Opposition (Rt. Hon. C. R. Attlee), by private notice, asked the Prime Minister "whether any constitutional difficulties have arisen and whether he has any statement to make."³ Mr. Baldwin replied that he had nothing to say that day: there was not at present any constitutional difficulty, but the situation was such as to make it inexpedient that he should be questioned. Supplementary questions from Mr. Attlee and Mr. Winston Churchill elicited nothing more, but there was never any doubt that the country's representatives in Parliament had a right to know what was going on.

¹ —who is neither an ex-Clerk nor a "Clerk-at-the-Table."

² Dr. Blunt, Bishop of Bradford. ³ 318 H.C. Deb. 5. s. 1440-1441.

Next day, Friday, December 4th,¹ Mr. Attlee renewed his question at the beginning of business. The Prime Minister still had nothing to say. Just before 4 p.m., however, on the usual motion for the adjournment at the week-end, Mr. Attlee tried again with better success.² The House of Lords stood adjourned from the Thursday night till Monday; by the diminished frequency of their sittings Second Chambers may lose opportunities. The House of Commons was ready to hear the Prime Minister, and the British Broadcasting Corporation's wireless service was alert to publish the answer in the homes of the people the same evening. They heard Mr. Baldwin dispose of the maladroitness of amorganatic marriage. There was no such thing known to our law. The lady whom the King married would, by the very fact of the marriage, necessarily become Queen with all the status, rights and privileges familiar in the case of the late Queen Alexandra and of Her Majesty Queen Mary. In fact, provision for a Queen, in the event of King Edward VIII marrying, had of course been made by law.³ The children of such a marriage would be in direct succession to the Throne.

"The only possible way in which this result could be avoided would be by legislation dealing with a particular case. His Majesty's Government are not prepared to introduce such legislation. Moreover, the matters to be dealt with are of common concern to the Commonwealth as a whole, and such a change could not be effected without the assent of all the Dominions. I am satisfied, from inquiries I have made, that this assent would not be forthcoming. I have felt it right to make this statement before the House adjourns to-day in order to remove a widespread misunderstanding. At this moment I have no other statement to make."⁴

This cleared the air. Many men and women had been hoping that, though King Edward had set himself the choice between throne and personal affection, a compromise might be found which would prevent the country from either losing a popular and gallant monarch or seeming to coerce him in the selection of a wife. Mr. Baldwin had narrowed the issue. At the same time he had brought into the foreground the implications of the Statute of Westminster.

Even before the Statute was passed in 1931, the King's Government in London would have felt obliged to consult the Dominions upon a matter of so wide concern. In 1931, after

¹ *Ib.*, 1529.

² *Ib.*, 1611.

³ Civil List Act, 1936 (26 Geo. V & 1 Edw. VIII, c. 15).

⁴ 318 H.C. Deb. 5. s. 1612.

preparatory discussions at Imperial Conferences, the Statute had recorded the unanimous acceptance by the Members of the British Commonwealth of Nations of the principle that it was

“meet and proper to set out by way of preamble to this Act that, inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom ”¹

Whatever these words may have seemed to prevent, they were now seen to give the Dominions the power to prevent the Parliament at Westminster from tampering with the succession to the Throne.

The opponents of the Statute of Westminster had criticized its prospective operation on the ground that consultation between the members of the British Commonwealth of Nations would involve interminable delay. But here, by some miracle of administrative organization, was the triumph of unanimity already attained in a crisis only a few days old.

In a statement to the Press² next day (Saturday, December 4th) Mr. Winston Churchill appealed for patience and tolerance. No Ministry, he contended, had the authority to advise the Sovereign's abdication.

“If the King refuses to take the advice of his Ministers, they are, of course, free to resign. They have no right whatever to put pressure upon him to accept their advice by soliciting beforehand assurances from the Leader of the Opposition that he will not form an alternative Administration in the event of their resignation and thus confronting the King with an ultimatum.”

The Leader of the Opposition repudiated the natural interpretation of these words. The practice of keeping the leaders of other parties in touch with developments of great national significance is, of course, by no means unusual.

After a week-end of general depression and anxiety the Prime Minister on Monday, December 7th,³ notably consolidated the position of the Imperial Government by making it clear that no inconsiderate pressure was being brought to bear upon the Sovereign. Asked by Mr. Attlee (by private notice)

¹ Preamble to 22 & 23 Geo. V, c. 4 (Statute of Westminster).

² *The Times*, December 7, 1936.

³ 318 H.C. Deb. 5 s. 1642.

if he had anything to add to the statement made on Friday, Mr. Baldwin read in the House of Commons a statement which was simultaneously delivered by Lord Halifax in the House of Lords. He emphasized that it was, and always had been,

“ the earnest desire of the Government to afford to His Majesty the fullest opportunity of weighing a decision which involves so directly his own future happiness and the interests of all his subjects.

At the same time they cannot but be aware that any considerable prolongation of the present state of suspense and uncertainty would involve risk of the gravest injury to National and Imperial interests and indeed no one is more insistent upon this aspect of the situation than His Majesty.

In view of certain statements which have been made about the relations between the Government and the King, I should add that, with the exception of the question of morganatic marriage, no advice has been tendered by the Government to His Majesty with whom all my conversations have been strictly personal and informal. These matters were not raised first by the Government but by His Majesty himself in conversation with me some weeks ago when he first informed me of his intention to marry Mrs. Simpson whenever she should be free. The subject has, therefore, been for some time in the King's mind and as soon as His Majesty has arrived at a conclusion as to the course he desires to take he will no doubt communicate it to his Government in this country and the Dominions. It will then be for those Governments to decide what advice, if any, they would feel it their duty to tender to him in the light of his conclusion.”¹

The speakers in both Houses of Parliament concluded with an earnest expression of deep and respectful sympathy with His Majesty. The statements were received in a manner which indicated overwhelming support. The King's subjects resigned themselves to await his decision.

On Monday, December 10th, King Edward's decision was made known. That morning he executed an Instrument of Abdication,² witnessed by his three brothers. Its terms were

¹ *Ibid.*

² I, Edward the Eighth, of Great Britain, Ireland, and the British Dominions beyond the Seas, King, Emperor of India, do hereby declare My irrevocable determination to renounce the Throne for Myself and for My descendants, and My desire that effect should be given to this Instrument of Abdication immediately.

In token whereof I have hereunto set My hand this tenth day of December, nineteen hundred and thirty-six, in the presence of the witnesses whose signatures are subscribed.

Signed at Fort Belvedere
in the presence of

ALBERT.
HENRY.
GEORGE.

EDWARD R.I.

communicated to Parliament in the afternoon in a "Message from His Majesty the King to this House, signed by His Majesty's own hand." The Prime Minister presented the Message at the Bar of the House of Commons, and "it was read out by Mr. Speaker, all the Members of the House being uncovered." Mr. Baldwin then moved "That His Majesty's most gracious Message be now considered," and gave a frank and unembittered summary of the events leading up to the crisis.¹ He narrated the four interviews of October 20th, November 16th, November 25th and December 2nd. At the second of these he had submitted his views that the contemplated marriage was not one that the country would approve.

"I pointed out to him that the position of the King's wife was different from the position of the wife of any other citizen in the country; it was part of the price which the King has to pay. His wife becomes Queen; the Queen becomes the Queen of the country; and therefore in the choice of a Queen the voice of the people must be heard."

That last sentence may be historic as a modern authority for the constitutional view that the people—in other words, Parliament acting through the Cabinet and expressing its will through the Prime Minister—may veto the Monarch's choice of a bride. If earlier precedents are sought, the second marriage of the Duke of York, who was afterwards King James II, offers a partial analogy. On September 30th, 1673, the Duke married the Princess Mary of Modena. Parliament was known to be hostile and, in order to carry out his design before Parliament could meet to protest, the Duke wedded the Princess by proxy. Meeting on October 20th, the House of Commons at once voted an address to the King, praying that the marriage should not be consummated and that the Duke should not marry "any person but of the Protestant religion." King Charles II was equal to the occasion. He promptly adjourned Parliament for a week and, on its reassembly, announced that the marriage had been completed. The House of Commons, nursing other grievances as well, took its remedy of refusing supply and voted another address to the King in favour of a dissolution of the proxy marriage. Next morning, before the address could be presented, the King came down to the House of Lords and prorogued Parliament for two months. Since those old times when a Stuart monarch could impose his wishes upon a reluctant country, the full doctrine of ministerial advice to the

¹ 318 H.C. Deb. 5. s. 2176-2186.

Crown has been developed. Today the Prime Minister would presumably advise the Crown over such a matter in just the same way as over any other. Some commentators spoke of the ten days' crisis of last December as a struggle between King and Parliament. As a constitutional monarch King Edward VIII never permitted any such struggle to begin. His answer to the Prime Minister's advice was simply, "I am going to marry Mrs. Simpson and I am prepared to go." He scrupulously refrained from fomenting any struggle; he anxiously sought to make the succession of his brother as little difficult as possible.

Mr. Baldwin's great speech, unembarrassed by a minor misadventure to the scanty notes he had prepared, had the supreme merit of sympathy both with its subject and with its audience. It was punctuated with generous murmurs of approval: when it ended, the Leader of the Opposition asked¹ if the sitting might be suspended in order that Members might give the Message due consideration. A suspension was agreed upon; after an interval of an hour and a half Mr. Speaker resumed the Chair at 6 p.m. Members of all parties now said their say. The question was put and agreed to. "Motion made, and Question 'That leave be given to bring in a Bill, to give effect to His Majesty's declaration of Abdication and for purposes connected therewith' put and agreed to."² The Bill was ordered to be brought in, "presented accordingly and read the first time: to be read a Second time tomorrow; and to be printed."³

The Second Reading of the Bill was taken next morning (Friday, December 11th).⁴ The framing of its terms had engaged the concentrated attention of the Law Officers, the Home Office and the Privy Council. It was fortunate that the senior Government draftsman, Sir Maurice Gwyer (now Chief Justice designate of the new Federal Court of India), was a recognized authority upon constitutional law and one who had played no small part in framing the Statute of Westminster. At this point, perhaps, we should interrupt the narrative to recall the technical effect of that Statute. A passage in its preamble declares that

"it is in accord with the established constitutional position that no law hereafter made by the Parliament of the United Kingdom shall extend to any of the said Dominions as part of the law of that Dominion otherwise than at the request and with the consent of that Dominion:"

¹ 318 H. C. Deb. 5. s. 2186. ² *Ib.*, 2197. ³ *Ib.*, 2198. ⁴ *Ib.*, 2203.

Words in a preamble have less weight than if enacted in the body of a statute. This passage in the preamble, however, is caught up and confirmed by Section 4 of the Statute of Westminster, which lays down that no future Act of the United Kingdom Parliament shall extend to a Dominion,

“unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof.”

This is clear enough; but, by virtue of Section 10, three Dominions (Australia, New Zealand and Newfoundland) remained outside Section 4 till their Parliaments should decide to come within it. The Abdication Bill reflects this complex. Canada (being within Section 4) is recited as having “requested and consented.”¹ Australia and New Zealand (being outside Section 4 and not yet having come within it) might—apart from “the established constitutional position”—on a narrow legalistic view have been bound by the Bill if nothing had been specifically said of them; but, at their very proper request, their “assent” was expressly recited.² Newfoundland (outside

¹ The insertion of these words in the Imperial Act was secured in Canada, Parliament being then in Recess, by Order in Council on December 10. Upon Parliament meeting His Majesty's Declaration of Abdication Act was passed on January 19, 1937.

² On December 9* a Ministerial statement was made on the motion for adjournment both in the Senate and the House of Representatives that the Commonwealth of Australia concurred in the decision of the Government of the United Kingdom not to legislate for something in the nature of a morganatic marriage, and on December 11† the following motion was submitted to each House “in order to give effect,” as the Prime Minister (Rt. Hon J A Lyons) said in the House of Representatives,‡ “to the Constitutional Convention recorded in the Preamble to the Statute of Westminster, which sets out in substance that any alteration of the law affecting the succession to the Crown requires the assent of the Parliaments of the Dominions”:

That—

Whereas His Majesty King Edward the Eighth by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, has, by an Instrument of Abdication executed on the tenth day of December, One thousand nine hundred and thirty-six, been pleased to declare that He is irrevocably determined to renounce the Throne for Himself and His descendants, and has for that purpose executed an instrument of abdication and has signified His desire that effect thereto should be given immediately:

And whereas a Bill intituled An Act to give effect to His Majesty's Declaration of Abdication and for purposes connected therewith has been introduced into the Parliament of the United Kingdom:

And whereas it is proposed to be enacted by that Bill that immediately upon the Royal assent being signified thereto the Instrument of Abdication so executed shall have effect, and thereupon His Majesty

* Com. Parl. Deb. No. 32.

† *Id.*, 2893, 2901.

‡ *Id.*, 2901.

Section 4 and at present lacking a Parliament) needed no specific mention.¹ The case of South Africa is exceptional. She was within Section 4 of the Statute of Westminster and accordingly the Abdication Bill recites her "assent." In addition, her Status of Union Act, 1934 (wherein she emphasized her position as a sovereign independent State), expressly

shall cease to be King, and there shall be a demise of the Crown, and, accordingly, the member of the Royal Family next in succession to the Throne shall succeed thereto and to all the rights, privileges and dignities thereunto belonging, and His Majesty, His issue (if any) and descendants of that issue shall not, after His Majesty's abdication, have any right, title or interest in or to the succession to the Throne, and section one of the Act of Settlement shall be construed accordingly, and the Royal Marriages Act 1772 shall not apply to His Majesty after His abdication, nor to the issue (if any) of His Majesty or descendants of that issue:

And whereas it is by the Preamble to the Act of the United Kingdom known as the Statute of Westminster, 1931, among other things provided that it is meet and proper to set out by way of preamble to that Statute that, inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne should thereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom.

And whereas the Bill intituled An Act to give effect to His Majesty's Declaration of Abdication and for purposes connected therewith will, upon the Royal assent being signified thereto, involve an alteration in the law touching the Succession to the Throne and it is desirable that the Parliament of the Commonwealth should assent to such alteration

this Senate (House of Representatives) of the Parliament of the Commonwealth hereby assents to such alteration

During the debate, the Attorney-General (Rt. Hon R. G. Menzies) remarked that it was highly doubtful whether the Parliament of the Commonwealth, the powers of which are enumerated in section 51 of the Constitution, had any direct power of its own motion to pass a substantive law dealing with the succession to the Throne.*

The motion was agreed to by each House.

The only State Parliament of Australia to pass any Act in connection with the abdication was that of New South Wales, by the Demise of the Crown (Amendment) Act, which also amended the Constitution (sec 12) of the State by including "abdication" within the meaning of "demise."

* *Ib.*, 2908

¹ Questions were asked in the India Legislative Assembly on January 25, 1937,† as to what opinion the India Government tendered to His Majesty's Government in regard to the marriage plans of His Majesty King Edward VIII; and, as to whether the Indian Government was consulted. The replies given by the India Government were that it had not been consulted, but that consultation of the Dominion Governments about any change in the Succession Act was obligatory under the Statute of Westminster.

† Q. Nos. 148, 167, 189 and 207. I. India Leg Assem Deb., 25th January, 1937.

incorporates as part of her own law the preamble and Section 4 of the Statute of Westminster. She does not rely exclusively upon any extension of a United Kingdom Act under Section 4. Her "assent," recited in the Abdication Bill, is followed up by legislation of her own which is referred to later. Lastly, the Irish Free State exhibits a further peculiarity. She was not mentioned in the Abdication Bill but, during the debate on the Bill, it was officially stated that she was passing legislation to deal with the position. She eventually produced her own solution—a metaphysical in-and-out membership of the British Commonwealth of Nations. In the Executive Authority (External Relations) Act, 1936,¹ passed in Dublin on December 12th, there are echoes of ancient controversies; the ghost of the famous "No. 2 Document" is being laid at last; but the Dublin legislation does recognize the abdication of King Edward VIII and the accession of King George VI. Such are the several divergencies for which the abdication of Edward found illustration and opportunity.² Before leaving this aspect of the crisis, one other question perhaps deserves notice. Abdication is happily unusual; it exists, of course, as the last step of a monarch faced with distasteful advice or, as in King Edward's case, determined upon a course which he sees that his advisers would, if consulted, feel obliged to advise against. Queen Victoria used to hint the threat of abdication. Her great-grandson actually abdicated. His action raised the problem whether the monarch can abdicate by unilateral motion. If so, King Edward ceased to be King on December 10th when he signed the formal declaration of his irrevocable decision. But, as he wore the Crown by virtue of the Act of Settlement of 1700, in the view of his advisers in London, he could not properly lay it aside until another Act of Parliament confirmed his intention to do so. His Majesty's Declaration of Abdication Act³ was passed at Westminster on December 11th. The legislation afterwards enacted by the Parliament of South Africa⁴ fixes the date of abdication as December 10th, the date

¹ Irish Free State Act No. 58 of 1936.

² The subsequent enactment of the Regency Act in London, another opportunity for inter-Dominion difference, has not been deemed—

"an alteration in the law touching the Succession to the Throne or the Royal Style and Titles."

It therefore does not "require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom."

³ 1 Edw. VIII, c. 3.

⁴ His Majesty King Edward the Eighth's Abdication Act (No. 2 of 1937) promulgated in the *Union Gazette*, 10th February, 1937. An interesting feature in connection with the Act is that when it was published as a Bill

on which King Edward VIII signed the Instrument of Abdication. The discrepancy is due to the fact that the Government of the Union of South Africa held that the King can abdicate by unilateral action and therefore that he ceased to be King when he signed the Instrument of Abdication.

As against the view of the Union Government, it was argued in South Africa, that the question as to whether the King had the right to abdicate by unilateral action did not affect the position, because in the Instrument of Abdication, he had merely expressed the desire that effect should be given to his intention to abdicate and that effect was given by the Act passed at Westminster on December 11th.

Such discrepancies can be inconvenient; had the point been taken in time, there is no reason to suppose that uniformity of date could not have been agreed among the members of the British Commonwealth. We must be content to rejoice, even amid some sacrifice of uniformity of detail, in the unanimity which, without revolution or party strife, accepted King George VI in place of King Edward VIII.

We now leave these formidable issues of constitutional law and return to the story of the Second Reading of the Abdication Bill in the Parliament at Westminster on the tenth and last day of the crisis. The Bill treated the abdication as a demise of the Crown; King Edward and his issue, if any ("and," in an apparently otiose phrase, "the descendants of that issue") were barred from the succession to the Throne; the Royal Marriage Act of 1772¹ was excluded from application to the outgoing sovereign. The Second Reading was voted in the House of Commons after an hour and a half by 403 votes to 5;² the Committee stage and Third Reading took less than an hour; within

in the *Union Gazette Extraordinary*, 7th January, 1937, it contained the following as the second paragraph in its preamble:

AND WHEREAS by the aforesaid Instrument of Abdication the Throne became vacant and King Edward the Eighth ceased to be supreme Lord in and over the Union of South Africa.

which paragraph did not appear in the Bill introduced into Parliament. Such Bill both in the preamble and in Clause 1 referred to the Instrument of Abdication (as set forth in the schedule of both Bills) as, "a copy of which is set out (forth) in the Schedule to this Act," which words did not occur in the Bill as published in the *Gazette*. The Bill introduced into Parliament and which became law also differed in respect of a new sub-clause (2) to Clause 1, as follows:

(2) Everything purporting to have been done in the name of the late King Edward VIII in accordance with law after the said Instrument of Abdication and before the passing of this Act, shall be deemed to have been lawfully done and to have had full force and effect, the provisions of the preceding sub-section notwithstanding.

¹ 12 Geo. III, c. 11.

² 318 H.C. Deb. 5. s. 2222.

another half-hour the Bill was through the House of Lords, where the three peers who formed the Royal Commission sat ready in robes and cocked hats to give the Royal Assent. The faithful Commons were summoned to attend the ancient ceremony. The Reading Clerk bowed and read the Commission. The Clerk of the Crown bowed, took his stand on the right of the Table and read the title "His Majesty's Declaration of Abdication Act." The Clerk of the Parliaments, on the other side of the Table, bowed and flung over his shoulder to the representatives of the House of Commons under the gallery at his back the centuries-old formula *Le Roy le veut*.¹ It was the end of a reign. Students of history could note the coincidence that on another December 11th (in 1688) James II left England and, as the Bill of Rights afterwards declared, "abdicated the Government." His marriage fifteen years earlier, distasteful to a majority of his countrymen on grounds both of religion and of international politics, had contributed to his unpopularity and thus was an element, however remote, in ensuring a welcome for William of Orange.

Swift and mercifully peaceful as was the revolution of 1688, the departure of Edward VIII from England in 1936 was an even more amazing instance of national quietism. Next morning, on the 12th December, the Lords, Spiritual and Temporal, the late King's Privy Councillors, and "numbers of other principal gentlemen of quality," with the Lord Mayor, Aldermen and Citizens of London (representing, as the historians say, the ancient Witan gathered to choose and proclaim a new King) were solemnly assembled at an Accession Council.² Then, in St. James's, at Charing Cross, Temple Bar and the Royal Exchange, the heralds with their mediæval chivalry proclaimed that—

the High and Mighty Prince **Albert Frederick Arthur George** is now become our only lawful and rightful Liege Lord **George the Sixth** by the Grace of God, of **Great Britain, Ireland** and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of **India**: to whom we do acknowledge all Faith and constant Obedience, with all hearty and humble Affection: beseeching God, by whom Kings and Queens do reign, to bless the royal Prince **George the Sixth** with long and happy Years to reign over us.

GOD SAVE THE KING.

¹ 103 H.L. Deb. 5. s. 775.

² *London Gazette Extraordinary*, December 12, 1936.

III. SPEAKER'S DECISIONS ON POINTS OF PROCEDURE RAISED IN THE HOUSE OF COMMONS IN CANADA, 1936

BY

ARTHUR BEAUCHESNE, C.M.G., K.C., LL.D., M.A., LITT.D., F.R.S.C.
Clerk of the House of Commons.

ON February 20, Mr. Heaps moved:

That, in the opinion of this House, the Government be requested to immediately introduce legislation granting adequate retiring allowances to all citizens over sixty years of age, thereby giving an opportunity to large numbers now unemployed to be re-absorbed into useful productive activity.

As the Government was requested to introduce immediately legislation involving an expenditure, the Speaker ruled that the motion was out of order because it was introduced by a private member and it purported to authorize an expenditure without the previous consent and recommendation of the Governor-General.

On February 21, Mr. Pouliot asked leave to introduce an Act to repeal 24-25 George V (1934), Chapter 25, "An Act respecting the Bureau for Translations." As there was a clause in the Bill providing for the abolition of the existing staff and appointment of translators under a new system, the Speaker decided it involved an expenditure and should have been moved by a Minister on the recommendation of the Governor-General and have been preceded by a resolution in Committee of the Whole House.

On February 24, Mr. Perley (Qu'Appelle) moved the following Resolution:

That, in the opinion of this House, the domestic freight rate on grain and grain products moving from any point in the provinces of Manitoba, Saskatchewan, Alberta, and British Columbia, to a point in any of the said provinces, or from any point, to another point, in any of the said provinces, be adjusted or reduced to at least not more than three cents per hundred pounds over the existing export rates.

A point of order being raised, the Speaker gave the following decision:

The adjournment of the debate, last Thursday, on the second reading of Bill No. 2, an Act to amend the Railway Act (Rates on grain), means that the question shall again be considered at a future sitting when the order for Public Bills will

be reached. This is what is called, in Parliamentary procedure, appointing a matter for consideration by the House. May, page 272, gives many precedents showing that the discussion of an appointed matter cannot be anticipated by a motion. The Bill proposes to extend to the westward traffic, from Fort William to Vancouver and the Pacific coast, the rates on grain and flour agreed to in the Crow's Nest Pass Agreement embodied in its essence as follows in the annual statutes of 1897:

"That there shall be a reduction in the company's present rates and tolls on grain and flour from all points on its main line, branches or connections, west of Fort William to Fort William and Port Arthur and all points east, of three cents per one hundred pounds."

The Order adjourning the debate had been passed by the House when Mr. Perley, the honourable member for Qu'Appelle, moved that domestic freight rates on grain products, from and to any point in the provinces of Manitoba, Saskatchewan, Alberta and British Columbia, be reduced to at last not more than three cents per hundred pounds over the existing export rates.

There is sufficient similarity in the Bill and the Motion to confine them to one debate. The domestic rates dealt with in the Motion are included in the rates and tolls on grain and flour mentioned in the Crow's Nest Pass Agreement. The question centralizes on grain rates in western Canada, and debate thereon could not be allowed last Thursday a few minutes after the House had adjourned it to a future sitting. The difference in details between the two propositions may be dealt with by moving amendments when the Bill is in Committee of the Whole, but it is not sufficient to justify a duplication of the debate. It is a well-known principle that the same question cannot be raised twice in the same session.

The main object sought both by the Bill and the Motion is the reduction of rates on grain and its products moving westwardly in the prairie provinces and British Columbia. They are both intended to put an end to an alleged unfairness in the present rates, and the whole debate, which will be centred on that grievance, must take place on the Bill and not on the Motion.

As Campion says, "in applying the Anticipation rule, preference is given to the discussion which leads to the most effective result," and this has established a descending scale of values for discussions—Bills, Motions, Amendments, etc.¹ A Bill has the right-of-way and cannot be sidetracked by a Motion.

I cannot follow any other course than to decide that the discussion of Mr. Perley's Motion is blocked by the adjournment of the debate on Bill No. 2, and for that reason I have to declare that the Motion cannot now be debated and must be struck off the Order Paper.

This decision does not prevent the subject matter of Mr. Perley's Motion from being discussed when the Bill is under discussion.

¹ *An Introduction to the Procedure of the House of Commons*, G. F. M. Campion, C.B. (now Clerk-Assistant of the House of Commons). P. Allen and Co., Ltd., 1929.

On March 2, Mr. Thompson moved:

That, in the opinion of this House, all rural telephone companies should be exempt from federal income tax

Mr. Speaker ruled the said proposed motion out of Order for the reason that it was not framed in such abstract or general terms that it could be entertained by the House. The proposal made therein was for a special reduction in the public revenue. The item to be struck out is mentioned, namely, the income tax levied on rural telephone companies. Such a proposal can only be entertained in the Committee of Ways and Means, and, as May says,¹ "these proposals must be grafted upon the financial scheme submitted by the Government and must not affect the balance of ways and means voted for the service of the year." True, the motion says that the exemption of the tax "should" and not "shall" be made, but even at that I think the proposal ought to be considered in the committee and not by the House, for it is essentially a ways and means resolution.

On March 6, Mr. Boulanger moved the Second Reading of a Bill to amend the Post Office Act, so that contracts for the transportation of mail, for amounts exceeding \$1,000, be awarded with the approval of the Governor-in-Council. The Speaker gave the following ruling:

This Bill provides that the Postmaster General may award contracts for the transportation of mail, that no contract for an amount exceeding \$1,000.00 per year may be awarded without the approval of the Governor in Council, that the contractors shall be paid according to a fixed rate between 35 cents and 70 cents per mile per day unless otherwise authorized by the Governor in Council.

Moreover, the sponsor states in the explanatory notes that it is sought by this Bill to allow the Postmaster General properly to remunerate the mail carriers who perform the important function of transporting the mail of Canada.

In the Session of 1929, Mr. Guthrie moved as an amendment to the motion for the Committee of Supply that rural mail carriers should be appointed by the Civil Service Commission upon a permanent basis with a definite rate of pay based upon mileage and the physical conditions of the territory involved, having regard to the amount paid to other civil servants for similar employment. This was in order because it was not a bill; it was a proposed resolution drafted in general terms which had no immediate effect and would have had to be followed by a Bill amending the Post Office Act; but a Bill like this one, authorizing the Postmaster General to enter into contracts for carrying the mail, involves the appropriation of public revenue

¹ May, 13th Ed., 544.

and must be recommended by the Governor General and originate in a Committee of the Whole specially set up for that purpose. A resolution must first be submitted which, under Standing Order 60, cannot be considered on the day it is introduced but must then be adjourned to a future sitting. A Bill founded on that resolution is then introduced. Such measures are always sponsored in our House by Ministers of the Crown.

This Bill does not follow these requirements, which are obligatory under the British North America Act, the Standing Orders and our practice, and I am bound therefore to rule it out of order.

On April 24, Mr. Reid moved to amend the Bank of Canada Act, and a point of order being raised, the Speaker gave the following decision:

The objects of the Bill which the Honourable Member for New Westminster is seeking to introduce in amendment to the Bank of Canada Act are to allow the Bank of Canada to hold silver coin and bullion in conjunction with gold as a reserve against the note issue and deposit liabilities and also to authorize the issue of certificates against the silver held in the reserve.

Under Section 31 of the Act, the Receiver-General of Canada is entitled to share in the profits of the Bank. If the reserve required as security against outstanding notes and deposit liabilities is to consist of silver bullion as well as gold, the fluctuations in the price of silver may cause the Bank to sustain serious losses and therefore its profits may be substantially curtailed with an accompanying reduction of the Receiver-General's share therein and therefore a diminution of the public revenue. It is an established principle in British Parliaments, which was set down by a Standing Order passed in the British House of Commons as far back as 1707, that financial business must originate in a Committee of the Whole House.

Private Members cannot introduce a Bill of this character which ought to be preceded by a resolution on motion of a Minister with the recommendation of His Excellency the Governor General. Moreover, there is now on the Order Paper a Resolution in the name of the Minister of Finance antecedent to a Bill to amend the Bank of Canada Act, so as to increase the capital stock of the Bank and to assure ownership of a majority of shares by the Government. Full discussion on this measure cannot be anticipated by a private member's Bill, and in determining whether a discussion is out of order on the ground of anticipation, the authors say that regard shall be had by the Speaker to the probability of the matter anticipated being brought before the House in a reasonable time. I am well aware that a motion for leave to bring a Bill is in order even if another similar motion with regard to a Bill dealing with the same subject-matter stands on the Order Paper, but when the latter is a Government measure announced in the Speech from the Throne, and bound to be taken up by the House, I doubt if the discussion of some of its provisions can be forestalled by the introduction of a private

member's Bill. For this reason and also because the Bill sought to be introduced deals with a part of the Dominion's finances, I rule it out of order.

On May 1, Mr. Pouliot having been asked by the Speaker to withdraw a statement which he made concerning the Leader of the Opposition refused to do so and walked out of the House. During a sitting of the Committee of the Whole House, he endeavoured to make his withdrawal, but was prevented from doing so by the Deputy Speaker on the ground that Mr. Pouliot, having been asked by the Speaker, should make his withdrawal when the Speaker was in the chair. Mr. Pouliot was absent from the House for two weeks, but finally gave in, and, at the opening of the sitting, made satisfactory retraction.

The Speaker's decision given on May 1, was as follows:

On Monday last, the Honourable Member for Témiscouata was asked by me, as Speaker of this House, to withdraw a statement he made concerning the Leader of the Opposition and which the Right Honourable Gentleman denied. The Honourable Member utterly refused to conform to my ruling and went as far as to defy the Chair by saying: "If I am wrong, I will withdraw; if I am not wrong, I will not withdraw . . . I will see the book before withdrawing." He walked out of the House while repeating this statement. In doing so, he offended not only against parliamentary practice but also against the proprieties of the House of Commons.

It is my duty as Speaker to keep intact the rules of debate and to safeguard the dignity of the Chair. I have waited a few days before taking action because I felt the Honourable Member for Témiscouata would realize the gravity of his conduct and take the first opportunity to make the withdrawal asked by the Chair. I note in the official debates that he was willing to withdraw his statement in Committee of the Whole yesterday but was prevented from doing so by the Chairman, who rightly decided that the offence having been committed in the House retraction must be made when the Speaker is in the Chair.

As a refusal to yield to the Speaker's authority is a serious matter which cannot be overlooked, I must insist on the Honourable Member for Témiscouata withdrawing the statement he made regarding the Right Honourable Leader of the Opposition, and I trust that in his desire to ensure the true observance of parliamentary practice, he will do so in good grace.

On June 1, when the Committee of the Whole was considering a Resolution to amend the Bank of Canada Act, Mr. Woodsworth made the following amendment to the Resolution:

That it is expedient to bring in a measure to amend the Bank of Canada Act to provide that all shares thereof shall be purchased by the Minister of Finance out of the Consolidated Revenue

Fund in order to assure ownership of the shares by the Government, and to provide for appointment of directors in such manner as to assure control of the board by the Government.

The Chairman gave the following decision:

This is not a motion for appropriation of public moneys. It is a proposed resolution under Standing Order 60 for a charge upon the people to be voted on another occasion and it is required in order that the Bank of Canada Act, a Bill involving an expenditure, be introduced.

The fundamental terms of the resolution submitted to the House with the Governor General's recommendation upon which this Committee was appointed cannot be amended. Amendments will only be in order if they fall within the terms of the resolution.

May¹ says that the procedure in Committees on money resolutions follows in principle the procedure of the Committee of Supply, and that amendments are out of order if they are proposed with a view to substituting an alternative scheme to that proposed with the Royal recommendation.

The point was decided by Mr. Whitley, then Chairman of Committees in the British House of Commons on the 22nd October, 1917.

I therefore ruled the amendment out of order

¹ 13th Ed, 546

IV. BROADCASTING PROCEEDINGS IN THE NEW ZEALAND PARLIAMENT

BY

T. D. H. HALL, LL.B.

Clerk of the House of Representatives.

PRIOR to the last General Election in New Zealand in 1935 the Labour Party indicated that if returned they would re-organize the national broadcasting service and would make provision for the people of the Dominion to hear the discussions in Parliament on national questions. When Parliament met therefore, in March, 1936, the Chamber of the House of Representatives was equipped for broadcasting. The equipment takes the form of four microphones, the fading in or out of each of which is under the control of the relay operator. The latter and the announcer are located in an inconspicuous corner of the Chamber where they are able to get a good view.

The microphones are effective both back and front, and are suspended in a line down the centre of the Chamber. It is thus possible for the relay operator to use the microphone which is nearest to the Member who is addressing the House. It has been found that with this arrangement all Members who talk sufficiently loud to be heard in the Chamber can be readily picked up for broadcasting. The three microphones not in use are faded out, otherwise the room noises and incidental conversation of Members is disturbing.

The announcer sits with the relay operator and is provided with a fifth microphone to enable him to interpolate the names of the Members addressing the House and any other descriptive matter that may be necessary.

The opening ceremony of Parliament was broadcast, temporary arrangements being made for the transmission of the Governor-General's speech from the Legislative Council Chamber.¹ Preliminary proceedings in the House dealing with the swearing-in of Members and the election of the Speaker were also broadcast. Subsequently the Government selected the occasions on which debates would be broadcast—usually on questions of national importance such as control of the Reserve Bank and the Government's scheme for the marketing of produce. The debates were broadcast over the national system and consequently had to break into the

¹ *i.e.*, The Upper House.

programmes that had been arranged. The broadcasting authorities had therefore to be advised as early as possible so that listeners could be notified of the break in the national programme and what the subject of the debate was to be. As a rule, a definite time was allotted for the broadcast—three hours was the usual time. That time was allotted to Members of the Government, Members of the Opposition and perhaps an Independent. The matter was in the hands of the Prime Minister. Having selected the occasion he notified the Leader of the Opposition and the Independents and indicated the time to be allotted to each speech (usually as fixed by the Standing Orders).¹ The Leader of the Opposition and the Independents selected their own speakers who were to take part in the broadcast. The Speaker announced at the beginning of the day's proceedings that the broadcast was to take place.

It was the first time that there had been a Labour Government in power in New Zealand and the broadcasting of the proceedings aroused a great deal of interest, at any rate at the start. Experience, however, showed that there were difficulties. For instance, the interference that necessarily had to take place with arranged and advertised programmes caused some inconvenience and disappointment. Then, too, it was difficult to fill in exactly the time allotted. A Member allotted half an hour for a speech might find he had exhausted all he had to say in twenty minutes, and there was then an awkward hiatus. There was a feeling, too, that there was undue preference to front-benchers in such an arrangement. It was felt that if the broadcasting were to continue it would have to be from a subsidiary station and not from the main national stations. Towards the end of the 1936 Session there were fewer broadcasts. The Government has indicated that it is prepared to consider a special station for broadcasting Parliamentary proceedings, but up to the present definite steps have not been taken.

¹ S.O., 100, 101; 126-128; 131, 143, 156, 157, 233, 260, 305 and 311.

V. PRECEDENTS AND UNUSUAL POINTS OF PROCEDURE IN THE UNION HOUSE OF ASSEMBLY, 1936

: BY

D. H. VISSER, J.P.
Clerk of the House of Assembly.

THE following points of procedure occurred in the House of Assembly and Joint Sitzings of the two Houses of Parliament during the 1936 Session:

A. House of Assembly.

Amendment to alter certain words wherever they occur.—In 1927,¹ for the convenience of the Committee of the Whole House on the Medical, Dental and Pharmacy Bill, an amendment was allowed to the effect that whenever the word “ mid-wife ” occurred in the Bill it should follow instead of precede the word “ nurse. ” This precedent was followed on February 17, when an amendment was allowed on Clause 5 of the Medical, Dental and Pharmacy Amendment Bill to alter “ director ” to “ directors ” and “ person ” to “ persons ” wherever the words occurred in the Clause.²

Motion for closure withdrawn.—On March 20, during a prolonged debate on the Third Reading of the Part Appropriation Bill, a motion was moved and seconded “ That the question be now put. ” After Mr. Speaker had put the motion and a division had been called, the motion and the call for the division were, with leave of the House, withdrawn.³

Select Committees given leave to revert to resolutions.—Owing to the absence of Members it was impossible to obtain the unanimous consent of all the Members of certain Select Committees to revert to resolutions which had been adopted. Leave was therefore obtained from the House.⁴

Leave given Select Committee to bring up amended Bill after Second Reading—Leave is customarily given to Select Committees to bring up amended Bills when such Bills are referred to Select Committees before second reading as principles have not been decided by the House. The Select Committee, which was appointed on the Arms and Ammunition Bill after second reading, desired to make numerous amendments which

¹ VOTES, 1927, 114.

² *Ib.*, 1936, 336.

³ *Ib.*, 1936, 159.

⁴ *Ib.*, 363-578.

were not in conflict with the principle of the Bill and which did not introduce new and important principles requiring an instruction. Leave was accordingly granted to the Select Committee to bring up an amended Bill.¹

Failure of Select Committee to meet within three sitting days of its constitution.—The Select Committee on the subject of the Mine Trading Amendment Bill failed, owing to the absence of a quorum, to hold its first meeting within the time prescribed by S.O. 230. Under ordinary circumstances the Clerk, in consultation with the Chairman of the Committee, would have convened the next meeting of the Committee, but as no Chairman had been elected the Committee lapsed and was revived by the House in accordance with the precedent established under similar circumstances in connection with the Select Committee on the subject of the Newspaper Libel Bill, 1931.²

Bill dropped and House adjourned owing to absence of quorum.—The Transvaal and Natal Masters and Servants Amendment Bill was introduced as a public bill by a Private Member. In Committee of the Whole House on the Bill a division was called. During the division a member called attention to the fact that there was no quorum. Ordinarily the fact that there was no quorum would appear from the division lists, but in this instance as the minority consisted of fewer than 10 Members only the names of the minority would be recorded and there would be no division lists to disclose the absence of a quorum. The Committee was therefore counted, and on it being found that there was no quorum the bells were rung for two minutes under S.O. 213. As it appeared that there was still no quorum the Chairman left the Chair and reported the fact to Mr. Speaker. The bells were again rung under S.O. 214 with Mr. Speaker in the Chair, and on it being found that there was still no quorum the House was adjourned until the next sitting day and the Bill dropped.³

Charges against Members.—On May 6, the Leader of the Opposition in Committee of Supply moved the reduction of the Prime Minister's Vote, and in the course of his speech made allegations of administrative malpractices involving the conduct of Members. The Chairman pointed out⁴ that the conduct of Members and charges of a personal character could only be raised upon a direct and substantive motion,⁵ and subsequently the Leader of the Opposition was given precedence

¹ VOTES, 1936, 447.

² *Ib.*, 507.

³ *Ib.*, 530.

⁴ 27 Union Assem. Deb. 3079.

⁵ May, 11th Ed., 277.

for a motion for the appointment of a Select Committee, to be nominated by Mr. Speaker, to inquire into the facts and circumstances in connection with the granting of a certain Land Bank loan,¹ the terms of appointment being wide enough to cover investigations into the conduct of members.²

On the last day of the Session during the debate on the Third Reading of the Appropriation Bill a Member, in criticizing the Department of Justice and the direction of public prosecutions, quoted two instances "to show that there is not the same rigorous prosecution of offences of persons who have political influence as there is of those who have none." After outlining the nature of these offences he stated that in both instances they had been committed by Members of Parliament (unnamed), and that but for the influence they possessed they would have been proceeded against. The Deputy Speaker thereupon called upon the Member to withdraw the reflections he had made upon Members of the House, and upon his declining to do so he was named and suspended.³

Direct pecuniary interest—On May 8, the Chairman of Committees and Mr. Speaker applying the principles laid down by Mr. Speaker in 1934,⁴ ruled that a Member could not be held to have a direct pecuniary interest unless the question before the House was actually to confer upon him a personal pecuniary advantage or diminish his pecuniary loss. It was held in this case that on the Vote containing the salary of the Minister of Lands there was nothing to prevent Members from defending the purchase of their land by the Government, since the Vote did not contain any provision for such purchase.⁵

Division of complicated question.—Acting on the principle that the House may order a complicated question to be divided (S.O. 84), Mr. Speaker, at the request of a Member on the consideration of the report of the Select Committee on Irrigation Matters, put a comprehensive amendment in three parts.⁶

Respective powers of Speaker and House to deal with conduct of a Member.—On June 5, the question arose as to whether the Speaker (under S.O. 93 and 94) or the House (S.O. 91) should take action against a Member whose conduct was grossly disorderly. Mr. Speaker stated that the powers vested in him by the House under its Standing Orders did not preclude the House from taking further action.⁷

¹ VOTES, 1936, 537.

³ VOTES, 1936, 793.

⁶ *Ib.*, 1936, 699, 700.

⁷ May, 11th ed., 923

² S.C. 18-36, pp xxxi, xxxii.

⁴ *Ib.*, 402.

⁵ *Ib.*, 579.

Union Assem. S.O. 18 (6) and VOTES, 1936, 713.

B. Joint Sitting of the Senate and House of Assembly under Sections 35 and 152 of the Constitution.¹

(1) Scope of proceedings at Joint Sitting.—

(a) *Message convening Joint Sitting.*—In 1918 and 1925 Joint Sittings were convened by Message from the Governor-General transmitting Bills for consideration and Mr. Speaker held that the Joint Sitting was confined to the Bill submitted.² In 1929 and 1930, with a view to giving the Joint Sitting greater latitude the message referred to the long titles of the proposed Bills and no copies were attached, but even this procedure was found to place unnecessary restrictions on the Joint Sitting, and in the latter Session a further message was necessitated giving the Joint Sitting power in general terms to consider "other and further measures which require a Joint Sitting." Consequently in 1936 the message convening the Joint Sitting was framed in the widest terms possible and after the Representation of Natives Bill had been introduced, Mr. Speaker ruled that there was nothing to prevent the introduction of an alternative Bill.³

(b) *New Member of House of Assembly sworn in and death of Member announced.*—During an adjournment of the House of Assembly for the holding of the Joint Sitting, the election of a new Member of the House of Assembly (Brig.-General Botha) was reported and the question arose as to whether he could take part in the proceedings of the Joint Sitting. Mr. Speaker decided that he was not entitled by virtue of his election to sit and vote in this Joint Sitting until he had taken the oath of allegiance under section 51 of the Constitution, and that as both Houses of Parliament were present at the Joint Sitting it was competent for Mr. Speaker to administer the oath there. General Botha accordingly took the oath at the Joint Sitting,⁴ and the fact was reported to the House of Assembly when it reassembled.⁵ Acting on this precedent Mr. Speaker subsequently announced at the Joint Sitting that a vacancy had arisen in the House of Assembly owing to the death of a Member (Mr. Struben), and took the first opportunity of making a similar announcement to the House of Assembly.⁶

(c) *Competency of Joint Sitting, instead of two Houses sitting separately, to legislate on certain matters.*—Section 152 of the

¹ 9 Edw. VII, c. 9.

² JOINT SITTING MIN., 1918, 10.

³ *Ib.*, 18. See also § (c) (iv) hereof.

⁴ JOINT SITTING MIN., 1936, 13.

⁵ ASSEM. VOTES, 1936, 210.

⁶ J.S. MIN., 1936, 22; ASSEM. VOTES, 1936, 225.

Constitution prescribed that a bill "embodying" a repeal or alteration of section 35 must be passed at a Joint Sitting, but in the case of *Rex v. Ndobe*,¹ the Chief Justice stated that to assume that an Act dealing with matters other than those contemplated by section 35 of the South Africa Act was passed by the two Houses sitting together as prescribed by section 35, would be "to assume that the Act was not validly passed." In view of this *obiter dictum* the question was raised, on April 6, as to whether it was competent for the Joint Sitting to deal with any provisions in the Bill before it, which related to "matters other than the qualifications necessary to entitle persons to vote at the election of Members of the House of Assembly." Mr. Speaker held that in his opinion "the Joint Sitting is competent to deal with all the clauses which formed part and parcel of the Bill embodying the scheme for the proposed alteration of section 35 of the South Africa Act."²

On the following day an attempt was made to interdict the Speaker from presenting the Bill to the Governor-General for his assent or to show cause why the Cape Provincial Division of the Supreme Court should not inquire into and determine the existing and future rights of the applicant Masui, a Native registered voter, under the Bill, but the application failed.³

After the Act had been promulgated the Court on October 14, 15, heard another application from a Native registered voter, Ndlwana, challenging the validity of the Act on the following grounds:

- (i) That the Joint Sitting can only validly pass an Act disqualifying a person from being registered as a voter by reason of his race or colour and that the Act does not disqualify any person;
- (ii) That even if certain sections do disqualify certain persons a large portion of the Act has nothing to do with the disqualification of voters and therefore the whole Act is invalid;

¹ 1930, A.D. 484.

² J.S. MIN., 1936, 80.

³ ASSEM. VOTES, 1936, 393 and Report of the Clerk of the House, which was referred to the Standing Rules and Orders Committee

The Report dealt *inter alia* with the question of whether breaches of privilege had not been committed by the applicant in attempting to serve a notice of motion on Mr. Speaker in the precincts of the House (see May, 11th ed., p. 80, and Act No. 19 of 1911, sect. 36), and by commencing proceedings in a Court of Law against Mr. Speaker for his conduct in obedience to the orders of Parliament (see May, 11th ed., p. 86). It also dealt with the question as to whether process could be stayed under section 5 of the Powers and Privileges of Parliament Act (No. 19 of 1911).

- (iii) That in any event, if the Act disqualifies certain persons it is invalid so far as it affects persons already registered as voters who are safeguarded under section 35 (2) of the South Africa Act; and
- (iv) That the Joint Sitting was not duly convened to consider this Act but the original draft Bill which was not proceeded with.

This application was refused in a judgment given on November 4, by the Judge President (Mr. Justice van Zyl), Mr. Justice Sutton and Mr. Justice Centlivres concurring. In the reasons for judgment it was held:

- (i) That the removal of persons from the ordinary voters' lists and the placing of such persons on other voters' lists was a disqualification within the meaning of section 35 (1) of the South Africa Act, which required a Joint Sitting.
- (ii) That section 35 (1) contemplated the consideration at a Joint Sitting of a Bill which dealt generally with the qualification of voters and contained a provision or provisions disqualifying any person from being registered on the ground of race or colour, and similarly that bills containing disqualifying provisions may also contain compensatory provisions.
- (iii) That even if section 35 (2) of the South Africa Act could not be amended by the Union Parliament under section 152 before the passing of the Statute of Westminster it could since the passing of the Statute of Westminster be amended under that section.
- (iv) That the Court could not enquire into the form of the Message convening the Joint Session, but that even if it could the terms of the Message were sufficiently wide to cover the second Bill which was eventually passed.

An appeal was made against this decision but dismissed by the Appellate Division of the Supreme Court of the Union on April 5, 1937.

(d) *Competency of two Houses sitting separately, instead of Joint Sitting, to legislate on certain matters.*—The Native Trust and Land Bill which was complementary to the Representation of Natives Bill was introduced in the House of Assembly, and Mr. Speaker was asked whether certain clauses placing restrictions on Natives in the acquisition of or residence on land would not involve disqualifications of voters requiring

a Joint Sitting under section 35 of the South Africa Act. Mr. Speaker, after considering the point, said that he did not feel called upon to give a ruling on a question that might depend on nice points of legal construction and interpretation, and that he was not prepared to rule any provisions of the Bill out of order on the ground that a Joint Session may be considered necessary.¹

(e) *Power of Houses sitting separately, instead of Joint Sitting, to amend entrenched sections of South Africa Act.*—In 1931 the House of Assembly and the Senate² approved of certain provisions to be made in the proposed Statute of Westminster “on the understanding that the proposed legislation will in no way derogate from the entrenched provisions of the South Africa Act.” Later in the same year the Union Parliament, under section 2 of the Statute of Westminster, acquired the right to pass legislation repugnant to the laws of England such as the South Africa Act, and the question was raised in 1934 as to whether this right could be exercised by the two Houses sitting separately to amend sections which under the South Africa Act could only be amended by a Joint Sitting. On that occasion³ Mr. Speaker said: “I have come to the conclusion that the Statute of Westminster does not in any way derogate from the entrenched clauses of the South Africa Act and that the position will not be changed by the passing of the Status Bill or the Constitution Bill. The whole existence of this Parliament is based on the South Africa Act which is our Constitution, and in my opinion, until they are repealed, we are bound by the provisions of that Constitution regarding the procedure to be followed in connection with the amendment or repeal of any of the entrenched clauses. Notwithstanding the provisions of the Statute of Westminster, I am of opinion that if we desire to amend or repeal any of the entrenched clauses, then we must follow the procedure laid down in the South Africa Act.”

At the Joint Sitting on the Representation of Natives Bill, 1936, the question was again raised and Mr. Speaker was asked whether a proposed amendment in the Bill to an entrenched section⁴ of the South Africa Act would be valid if passed by the Joint Sitting, and if so whether the section as amended could in future be amended only by a Bill passed at a Joint Sitting. To this Mr. Speaker replied that the point was hardly one of order and that he was not prepared to

¹ VOTES, 1936, 500.

² SEN MIN., 1936, p. 91; ASSEM. VOTES, 1931, 530-629.

³ ASSEM. VOTES, 1934, 506.

⁴ sec. 35.

express an opinion as to the validity or otherwise of any Bill or part of a Bill that may be passed. Such an opinion would fall outside the scope of his functions.¹

In the case of *Ndlwana v. The Minister of the Interior and Others* (see par. (c) above), the Judge President (Mr. Justice van Zyl) remarked that "for the purposes of this case it is not necessary to decide whether in view of the Statute of Westminster, Parliament, as ordinarily constituted, can repeal or amend any of the entrenched sections."

(2) *Adjournment of House during Joint Sitzings*.—Hitherto the Joint Sitzings on entrenched clauses have been held in the morning without interfering with the afternoon sittings of the House of Assembly. On the present occasion, however, morning sittings were considered inadequate and sessional orders were passed,² facilitating the adjournments of the House for Joint Sitzings and empowering Mr. Speaker to shorten or prolong the length of the adjournments.³ Leave was also granted to Select Committees of the House of Assembly to meet during the adjournments for the Joint Sitting.⁴

(3) *Petition for leave to be heard at Bar*.—On February 17, a petition was presented at the Joint Sitting from Natives adversely affected by the Native Representation Bill, praying for leave to be heard at the Bar, by the Rt. Hon. Sir James Rose-Innes.⁵ As the petitioners were particularly and directly affected by the measure before the Joint Sitting and had interests which were distinct from the general interests of the country, the petition was in order, but no further action was taken as the Bill in question was not proceeded with and another Bill was introduced.⁶

(4) *Expedition of business*.—In order to expedite the business of the Joint Sitting a "guillotine" resolution was, for the first time in South Africa, adopted on March 6. Subsequently it was found possible by arrangements with the parties in opposition to dispense with the order, and it was consequently discharged before being put into operation.⁷

(5) *Two Bills dealing with same subject*.—In conformity with the practice and rules of the House of Assembly two Bills on the same subject were allowed to run concurrently, and when one was passed the other was discharged by Mr. Speaker under S.O. 178 (2).⁸

¹ J.S. MIN., 1936, 79.

² ASSEM. VOTES, 1936, 169, 185.

³ See *ib.*, 181 ad J.S. MIN., 1936, 23. for meeting of House accelerated.

⁴ ASSEM. VOTES, 1936, 170.

⁵ A former Chief Justice of the Union —[ED.]

⁶ J.S. MIN., 1936, 8.

⁷ *ib.*, 46, 50.

⁸ *ib.*, 81.

(6) *Amendment hostile to motion for leave to introduce Bill.*— On the principle that on a motion for leave to introduce a Bill amendments may be moved that are either hostile to a Bill or to effect an alteration,¹ an amendment was allowed to omit all the words after “ That ” for the purpose of substituting words having the effect of delaying the Bill until the Bill had been adequately made known to the people of the Union and until the Union Native Conference had been consulted. The amendment was negatived and the first reading of the Bill was agreed to after a division.²

¹ May, 11th ed., p. 462.

² J.S. MIN., 1936, 5-6.

VI. FEDERAL POWERS IN CANADA

BY THE EDITOR

Amendment of the Constitution.—Following upon the references in last issue of the JOURNAL¹ to the movement to amend the Constitution of the Dominion,² two debates of considerable constitutional interest and importance took place in both Houses of the Dominion Parliament during the early part of the year under review in this issue; the first upon a motion in the Senate by the Hon. George Lynch-Staunton, to enable the Parliament of Canada to amend, by its own Act, the Canadian Constitution; and the second, upon a motion initiated in the Commons for a Joint Address to the King for certain definite amendments of section 92 of such Constitution in connection with Provincial taxation and Provincial loans.

Authority to Amend B.N.A. Act.—The first debate above-mentioned was opened by Senator Lynch-Staunton, who rose in the Senate on April 29, in accordance with the following notice:

That he will draw the attention of the Senate to and inquire of the Government whether it is the intention of the Government to take steps to have legislation passed by the Imperial Parliament to the end that the Parliament of Canada shall have the authority to, from time to time, amend the British North America Act as it may deem proper.

This debate,³ which continued during several sittings, centred upon the legislative powers of the Dominion Parliament and those of the Provinces. It is too lengthy to deal with here, but the debate well merits careful study, as indicating the difficulties which surround sections 91 and 92 of the Constitution, commonly known as "the distributive sections," the former setting out the powers of the Federal and the latter those of the Provincial Parliaments.

B.N.A. Acts—Joint Address.—In opening the second debate above-mentioned, the Minister of Justice (Hon. Ernest Lapointe, M.P.) moved in the Commons on May 14,⁴ the fol-

¹ Vol IV, pp 14-18

² British North America Act (30 Vict. c 3 as amended)

³ LXXII, Can Sen Deb No 21, pp 223-228, *ib*, No 22, pp 242-246; *ib*, No 34, pp 445-454, *ib*, No 35, pp 461-464, *ib*, No 39, pp. 517-520, *ib*, No 42, pp 550-555, *ib*, No. 43, pp 571-574, *ib*, No 44, pp 585-589; *ib*, No 45, pp 616-621

⁴ LXXXI, Can. Com. Deb No 64, pp. 3034-3035

lowing motion for a Joint Address to the King for amendment of the Constitution:

That an humble address be presented to His Most Excellent Majesty the King in the following words:

To the King's Most Excellent Majesty;
Most Gracious Sovereign,

Resolved, that an humble Address be presented to His Most Excellent Majesty the King, in the following words:
To the King's Most Excellent Majesty;

Most Gracious Sovereign:

We, Your Majesty's most dutiful and loyal subjects, the Commons of Canada in Parliament assembled humbly approach Your Majesty praying that you may graciously be pleased to give your consent to submitting a measure to the Parliament of the United Kingdom of Britain and Northern Ireland to amend the British North America Acts, 1867 to 1930, and the British North America Act, 1907, and that such measure be expressed as follows:

An Act, to amend the provisions of the British North America Acts, 1867 to 1930, relating to taxation and to enable the Government of Canada to guarantee debts of the Provinces of Canada.

Whereas an address has been presented to His Majesty by the Senate and Commons of Canada requesting the enactment of the provisions hereinafter set forth:

Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and the Commons, in this present Parliament, assembled, and by the authority of the same, as follows:

1. (1) Section ninety-two of the British North America Act, 1867, is amended by adding thereto, as clause 2A, the following:

2A. Indirect taxation within the province in respect of:

(1) retail sales, other than of all alcoholic beverages, spirits, malt, tobacco, cigarettes and cigars which are subject to customs and excise duty or tax in Canada or other than of all goods and articles for delivery without the province;

(11) the patronage of hotels, restaurants and places of amusement or entertainment:

in order to the raising of a revenue for provincial purposes.

(2) The said clause 2A shall be deemed to have retro-active effect with respect to provincial legislation in force at the passing of this Act.

2. The Parliament of Canada may authorize the Government of Canada to guarantee the payment of the principal, interest and sinking fund of any securities (hereinafter called "guaranteed securities") which any province of Canada may from time to time make or issue, and subject to the provisions of this Act may prescribe the terms and conditions upon which any guarantee so authorized shall be given,

and the provisions of this Act shall, in the event of any such guarantee being given, apply and have full force and effect notwithstanding anything contained in the British North America Acts, 1867 to 1930, the British North America Act, 1907, the Parliament of Canada Act, 1875, the Canada (Ontario Boundary) Act, 1889, the Canada Speaker (Appointment of Deputy) Act, 1895, Session 2, or any Acts, orders, rules and regulations passed or made thereunder or pursuant thereto establishing a province or admitting a colony or province into the Union or affecting the constitutional relationship between Canada and a province

3. The Legislature of any province of Canada may, with reference to the principal, interest and sinking fund of securities which the province may from time to time make or issue, authorize the government of the said province to enter into an arrangement with the Government of Canada whereby the Government of Canada shall guarantee the payment of the principal, interest and sinking fund of such securities.

4 (1) For the purpose of securing Canada against loss resulting from the giving of a guarantee under the authority of this Act, the Government of Canada, whenever in its opinion any default has occurred in respect of any payment on account of principal, interest or sinking fund of the guaranteed securities, may:

(a) withhold any payment to the province on account of any grant payable by the Government of Canada to the province for its local purposes or for the support of its Government and Legislature or on account of interest in respect of its public debt or in lieu of public lands or on any other account whatsoever:

(b) effect payment in whole or in part of any such grant by payment direct to a creditor of the province of any amount owing to such creditor on account of the guaranteed securities. In this and the next succeeding paragraph "creditor" shall include a trustee of a sinking fund;

(c) out of any revenue received or collected by the Government of Canada or any department or officer thereof for or on behalf of the province, make payment direct to a creditor of the province of any amount owing to such creditor on account of the guaranteed securities.

(2) The Legislature of any province may charge the principal, interest or sinking fund of the guaranteed securities on any revenue of the province, upon terms that such revenue shall, if the Government of Canada so requires, be disbursed exclusively in payment of such principal, interest or sinking fund and may, if the Government of Canada so requires, provide for the depositing of all funds from the revenue so charged in a trust account in a bank or banks for the purpose of implementing the said charge.

5. This Act may be cited as the British North America Act, 1936, and the British North America Acts, 1867 to 1930, the British North America Act, 1907, and this Act may be cited together as the British North America Acts, 1867 to 1936.

The debate¹ upon the motion in the Canadian Commons for a Joint Address is also deserving of careful study by all interested in the relative powers of a Central Parliament and those of its States or Provinces.

The Resolution authorizing the Joint Address to the Crown for amendment of the Constitution by the Imperial Parliament was adopted by the Commons after division on May 15, and the following motion by the Minister of Justice was thereupon agreed to:

That a message be sent to the Senate informing their Honours that this House has passed an Address to His Most Excellent Majesty the King, praying that he may graciously be pleased to give his consent to submitting a measure to the Parliament of the United Kingdom of Great Britain and Northern Ireland to amend the British North America Acts, 1867 to 1930, and the British North America Act, 1907, and requesting their Honours to unite with this House in the said Address hereto attached. And that the Clerk of the House do carry the said message to the Senate.

Upon the consideration by the Senate of the Commons message transmitting the proposed Joint Address, the Hon. Raoul Dandurand, as representing the Government, moved:

That the Senate do unite with the House of Commons in the said Address and do insert in the blank space therein the words "Senate and."

Debate in the Senate continued on the 26, 27 *idem*, and the 3, 8, and 10th of June.²

On May 26, however, the Hon. Mr. Donolly proposed the following motion, which was duly carried:

That this resolution now being considered by the Senate be referred to the Standing Committee on Banking and Commerce.

On June 3 the Chairman of such Committee brought up the following Report:³

The Standing Committee on Banking and Commerce begs to report that pursuant to reference made by the Senate on the 27th May, 1936, an Address to His Most Excellent Majesty the King, praying that he may graciously be pleased to give his consent to submitting a measure to the Parliament of the United Kingdom of Great Britain and Northern Ireland to amend the British North America Acts, 1867 to 1930, and the British North America Act, 1907, has been under its consideration, and the Committee

¹ LXXII, Can. Com. Deb. No. 64, pp. 3034-3082; and No. 65, pp. 3085-3116.

² LXXII, Can. Sen. Deb. No. 29, pp. 347-361, *ib.*, No. 31, pp. 378-390; *ib.*, No. 32, pp. 392-408; *ib.*, No. 35, pp. 455-456; *ib.*, No. 37, pp. 470-471, and *ib.*, No. 39, pp. 510-517.

³ *Ib.*, No. 35, pp. 455.

has heard representatives bearing on that portion thereof respecting the conferring on the provinces of certain powers of indirect taxation and recommends that such portion be not concurred in.

The Report was adopted, the voting being, Contents, 49; Non-Contents, 10.

On June 8,¹ the Hon. Raoul Dandurand moved the following motion, which was agreed to:

That the order for resuming the further adjourned debate on the motion that the Senate do unite with the House of Commons in an Address to His Most Excellent Majesty the King, be restored to the Orders of the Day, and that it be the first Order after third readings tomorrow.

On June 10² the same Senator again moved the original motion:

That the Senate do unite with the House of Commons in an Address to His Most Excellent Majesty the King praying that he may graciously be pleased to give his consent to submitting a measure to the Parliament of the United Kingdom of Great Britain and Northern Ireland to amend the British North America Acts, 1867 to 1930, and the British North America Act, 1907, and that the Senate do insert in the blank space therein the words "Senate and."

To this Question the Hon. A. C. Hardy moved the following amendment:

That the said Address be amended at the end of the paragraph 1 of Clause 2A, the following:

provided that such taxation does not favour or discriminate against the sales of any goods or articles of the growth, produce or manufacture of any province or of any country;

to which, no objection being made, he moved the addition of the following words to his amendment:

or in favour of or against any person, partnership or company domiciled in another province or country.

The amendment was, however, negatived, the voting being: Contents, 15; Non-Contents, 40, and the original motion was declared lost on the same division. For the present, therefore, the proposal to amend section 92 of the Constitution in terms of the Joint Address abovementioned, is defeated.

Validity of Certain Acts.—It is the question of the division of legislative powers between the Dominion and the Provinces, referred to above, which has been the cause of the recent testing in the Supreme Court of Canada of certain measures dealing

¹ LXXII, Can. Sen. Deb. No. 37, pp. 469-471.

² *Ib.*, No. 39, pp. 510-517

with social reform passed by the Dominion Parliament in 1935, and the subsequent appeals to the Judicial Committee of the Privy Council.

The Acts in question, which all concern industrial legislation,¹ are:

- A. Farmers' Creditors Arrangement Act, 1934, as amended by the Farmers' Creditors Arrangement Act Amendment Act, 1935.
- B. Weekly Rest in Industrial Undertakings Act, 1935.
- C. Minimum Wages Act, 1935.
- D. Limitation of Hours of Work Act, 1935.
- E. Employment and Social Insurance Act, 1935.
- F. Natural Products Marketing Act, 1934, as amended by the Natural Products Marketing Act Amendment Act, 1935; and
- G. Criminal Code.

It is outside the sphere of this JOURNAL to go into these cases. Our object is merely to point them out in order to show that there is difficulty in regard to the question of the division of legislative powers between the Dominion and the Provinces under the Constitution. To those who wish to study the cases in detail, reference can be made to the Law Reports, and the reports of the Proceedings before the Judicial Committee of the Privy Council as reported in *The Times*.²

Act A.—The judgment of the Supreme Court of Canada in the case of this Act is dated June 17, 1936, answering the following question referred to the Court by order of the Governor-General-in-Council of November 18, 1935 :—
“Is Act A, or any of the provisions thereof, and in what particular or particulars, or to what extent, *ultra vires* the Parliament of Canada? The Chief Justice and four of the Judges held that the Act was *intra vires*, and one Judge held that the Act, except sec. 17, was *ultra vires*, and that such section was *intra vires*. Special leave was given for appeal to the Judicial Committee of the Privy Council, the parties being Attorney-General for British Columbia *v.* Attorney-General

¹ It is not proposed to refer to the appeals to the Privy Council in *Forbes v. Attorney-General for Manitoba* and the Judges *v. Attorney-General for Saskatchewan*, heard by the P. C. about the same time and both dealing with questions of liability of certain persons to income tax, or to the appeal by the Attorney-General for Ontario concerning the validity of an Act of the Parliament of Canada in regard to Trade Mark Legislation.—[Ed.]

² *The Times* of November 6, 7, 10, 27, 28, 1936 and January 30, 1937.

for Canada and others. Their Lordships began the hearing on November 26, 1936, and the hearing was adjourned to the 28th *idem* when judgment was reserved without calling on counsel for the Attorney-General of Canada. On January 29, 1937, their Lordships "humbly advised His Majesty that the appeal be dismissed, without costs, and that the opinion of the majority of the Supreme Court should be confirmed."

Acts *B*, *C* and *D*.—The judgment of the Supreme Court of Canada in the case of these three Acts is dated June 17, 1936, answering the questions referred to the Court by order of the Governor-General-in-Council, dated November 5, 1935.²—"Are Acts *B*, *C* and *D*, or any of the provisions thereof, and in what particular or particulars, or to what extent, *ultra vires* of the Parliament of Canada?" The Chief Justice of Canada and two of the Judges were of opinion that (except as to section 6 of Act *C*) the Acts were *intra vires*, and three Judges held that they were *ultra vires*.

Special leave was given for appeal to the Privy Council, the parties being Attorney-General for Canada *v.* Attorney-General for Ontario and Others. Their Lordships began the hearing on November 13, 1936, it was continued on the 19th, 20th, and 23rd *idem*, on which lastmentioned date judgment was reserved. On January 29, 1937, their Lordships, in delivering judgment, stated that the Supreme Court was equally divided, and therefore the formal judgment could only state the opinions of the three Judges on either side. Their Lordships were of opinion that the answer to the three questions should be that the Act in each case was *ultra vires* of the Parliament of Canada, and they would humbly advise His Majesty accordingly.

Act *E*.—The judgment of the Supreme Court of Canada in the case of this Act is dated June 17, 1936, answering in the affirmative, by a majority of four to two, the following question referred to the Court by order of the Governor-General-in-Council dated November 5, 1935:—"Is Act *E*, or any of the provisions thereof, and in what particular or particulars, or to what extent, *ultra vires* of the Parliament of Canada?"

Special leave was given to appeal to the Privy Council, the parties being as in the case for Acts *B*, *C* and *D*. Their Lordships began the hearing on November 5, 1936. It was continued on the 6th and 9th *idem*, when judgment was reserved. On January 29, 1937, their Lordships dismissed the appeal, agreeing with the majority of the Supreme Court.

Act *F*.—Their Lordships dismissed the appeal brought from the judgment of the Supreme Court of Canada dated June 17, 1936, in the case of Act *F*, which Court held unanimously that such Act was *ultra vires* of the Parliament of Canada. Their Lordships found that there was no answer to the contention that the Act in substance invaded the Provincial field and was invalid. They were unable to support the Dominion legislation as it stood and therefore advised His Majesty that the appeal be dismissed.

Act *G*.—The Board on November 9, 1936, began the hearing of an appeal, by special leave, by the Attorney-General for British Columbia from a judgment of the Supreme Court of Canada dated June 17, 1936, holding that sect. 498A of the Criminal Code of Canada (Act *G*) was *intra vires* the Parliament of Canada. On January 29, 1937, their Lordships dismissed this appeal, being in agreement with the decision of the majority of the Supreme Court, that no part of section 498A was *ultra vires* and advised His Majesty accordingly.

General.—A few facts¹ in connection with the Constitution of Canada and her Provinces may be of interest to our readers in connection with these two debates.

The original federation of Canada can be dated from the effect of the United States Civil War in 1860 upon the establishment of a British nation on the North American Continent. At first the federation only included the four Provinces, Upper and Lower Canada (*i.e.*, Ontario and Quebec), and the maritime Provinces of Nova Scotia and New Brunswick. This Constitution was embodied in the British North America Act, 1867 (an Act of the Imperial Parliament commonly known as "the B.N.A. Act"). The five Provinces which joined the Federation later have their Constitutions, not in the B.N.A. Act, but in Acts of the Parliament of Canada passed when such Provinces came into existence—namely, Manitoba (1870); British Columbia (1872); Prince Edward Island (1873); Saskatchewan (1905); and Alberta (1905).

The B.N.A. Act provides that its amendment can only be effected by the Imperial Parliament, upon the presentation of an Address to the Sovereign by both Houses at Ottawa. There have been seven of such amending Acts, but until the Dominion-Provincial Conference, 1935,² there has never been a proposal

¹ *Vide* a speech by the Attorney-General (Hon. T. C. Davis, K.C., M.P.P.) in the Legislative Assembly of Saskatchewan, March 24, 1936. *Printed by Order of the Legislature.* (The speech covers 19 pp., and is well worthy of study.—[ED.]

² *See* JOURNAL, Vol. IV, pp. 14-18.

to amend what are called "the distributive sections"—namely, sections 91 and 92.

Hitherto, any changes in respect of Dominion and Provincial legislative powers in Canada have come about by judicial interpretation of the two sections quoted above, largely decisions by the Judicial Committee of the Privy Council in London. But a feeling seems to be growing in Canada that the Constitution needs revision to meet modern conditions and that provision should be made by which the B.N.A. Act can be amended in Canada by Act of her own Parliament. A reconstruction of the Constitution is therefore urged in many quarters, but in any such reconstruction, the Provinces are anxious to ensure that the authority of the Dominion Parliament by legislation on matters within the exclusive powers of the Provinces shall not be extended. In fact, when the Statute of Westminster was being drawn up, it was this Provincial anxiety that resulted in the insertion of section 7.¹

In the Federal-system Constitutions of Canada, Australia and the United States, the question of the division of the Central and the State, or Provincial, legislative powers is becoming an ever-growing problem.

¹ *Saving for British North America Acts and application of the Act to Canada.*

7.—(1) Nothing in this Act shall be deemed to apply to the repeal, amendment or alteration of the British North America Acts, 1867 to 1910, or any order, rule or regulation made thereunder.

(2) The provisions of section two* of this Act shall extend to laws made by any of the Provinces of Canada and to the powers of the Legislatures of such Provinces.

(3) The powers conferred by this Act upon the Parliament of Canada or upon the Legislatures of the Provinces shall be restricted to the enactment of laws in relation to matters within the competence of the Parliament of Canada or of any of the Legislatures of the Provinces respectively.

* Validity of laws made by Parliament of a Dominion 28 and 29 Vict. c. 63.

VII. ADELAIDE CONFERENCE OF COMMONWEALTH AND STATE MINISTERS, 1936

BY THE EDITOR

DURING the year under review in this Volume, the Commonwealth has been undergoing difficulties, both in regard to the distribution of the legislative power and the financial relations as between the Commonwealth and the States. Reference is made in this Volume,¹ to the two important judicial decisions given during the year, in regard to interpretations of the Commonwealth Constitution, the one by the Privy Council and the other by the High Court of Australia, the former given before, and the latter after the Adelaide Conference, both of which were subsequently submitted to Referendum. We will now take note of some of the proceedings of the Conference. It is not, however, the object of our Society, through its JOURNAL, to examine legislation either generally or, in every case, when such may involve any constitutional amendment, but rather to confine ourselves to the treatment of such amendments as relate to Parliament, its powers, constitution or composition, or concern its privileges, Members or Officers. Therefore, only those proceedings of the Conference which come within this ambit, including the distribution of the legislative power between the Federal Parliament and those of the States, will be dealt with here.

Quick and Garran, in their monumental work² on the Commonwealth Constitution, referring to the legislative powers of the Federal Parliament enumerated in section 51 of the Constitution, say:

They are not expressly described as either exclusive powers or concurrent powers, but an examination of their scope and intent, coupled with subsequent sections, will show clearly that, whilst some of them are powers which either never belonged to the States, or are taken from the States and are vested wholly in the Federal Parliament to the exclusion of action by the State Legislatures, others are powers which may be exercised concurrently by the Federal Parliament and by the State Legislatures.

Space does not admit of the recital here of the sections of the Commonwealth Constitution bearing, directly or indirectly, upon its legislative power, but they may be given as: 51 (Legislative powers of the Parliament); 52 Exclusive powers

¹ Article VIII.

² *The Annotated Constitution of the Australian Commonwealth*, by Quick and Garran. London, The Australian Book Company, 1901, 508-9.

of the Parliament); 88 (Uniform duties of customs); 89 (Payment to States before uniform duties); 90 (Exclusive power over Customs, excise and bounties); 91 (Exceptions as to bounties); 92 (Trade within the Commonwealth to be free); 93 (Payment to States for five years after uniform Tariffs); 94 (Distribution of surplus); 95 (Customs duties of Western Australia); 96 (Financial assistance to States); 98 (Trade and commerce includes navigation and State railways); 99 (Commonwealth not to give preference); 100 (Nor abridge right to use water); 101 and 103 (Inter States Commission); 102 (Parliament may forbid preferences by State); 105, as amended by Acts Nos. 3 of 1910 and 1 of 1929 (taking over public debts of States).

Chapter V deals with certain of the legislative powers of the States and certain restrictions imposed upon them.

Adelaide Conference, 1936.—On the 26th to 28th August inclusive, a Conference of Commonwealth and State Ministers met in the Legislative Chamber, Parliament House, Adelaide, the Capital of South Australia, attended by the number of Delegates given against the names of the following Parliaments: Commonwealth (13); New South Wales and Victoria (each 4); Queensland (2); South Australia (6); Western Australia (1); and Tasmania (3); for the purpose of discussing certain subjects.

The Commonwealth Delegation was headed by the Prime Minister (who was Chairman of the Conference), and that of each State by its Premier or Acting Premier, except in the case of Western Australia, which, on account of the Premier's retirement, upon resignation from office on grounds of ill-health, was represented by their Minister for Works and Water Supplies.

The Agenda was as given below, and the notation in brackets after each item indicates which Government asked for the subject to be included. The more important subjects were dealt with in full Conference, but the following items were considered by Sub-Committees which subsequently reported to the Conference:—Agriculture and Commerce; International Conventions; Commonwealth Constitution; Defence; Health; Transport, etc.; Development, etc.; Customs, etc.; Finance, etc.; Taxation; and Unemployment.

AGENDA

Full Conference.

1. Federal Aid Roads Agreement. (N.S.W.; Vic.; S.A.; Tas.)
2. Financial relations between the Commonwealth and States:
 - (a) Relations of the Commonwealth and States in regard to finance generally. (N.S.W.; Q'land; W.A.; and Tas.)

- (b) Increased annual payments by the Commonwealth to the States for a fixed period of years. (Vic.)
 - (c) Assumption by Commonwealth Government of the liability for portion of certain debts of the States, *e.g.*, Soldier Settlement, etc. (Vic.)
 - (d) Discontinuance by Commonwealth Government of appropriating revenue surpluses to trust Funds instead of making them available to the States (Vic.)
 - (e) Annual increasing payments to the Sinking Fund by the Commonwealth on account of States' debts, with a corresponding relief of Sinking Fund payments by the States. (Vic.)
 - (f) Amendment of the Financial Agreement. (Vic.)
 - (i) The question of increasing the fixed payments made by the Commonwealth towards interest and sinking fund on States' debts.
 - (ii) The substitution of a more equitable formula for the allocation of loan moneys to the various Governments.
 - (iii) Reduction of the 4 % sinking fund contribution in respect of loans raised for deficits.
 - (iv) Variation of the rate of $4\frac{1}{2}$ % payable on the amount of repurchased securities.
 - (g) Request for a Commonwealth grant for technical education. (N.S.W. and Vic.)
 - (h) Question of the contribution by the Commonwealth towards the maintenance of services, particularly in regard to education, health and social services of the States. (Q'land.)
 - (i) Basis of Commonwealth Grants. (W.A.)
 - (j) Commonwealth grants for special purposes—imposition of conditions requiring contributions from State revenue. (Vic. and Tas.)
 - (k) Administrative cost of distribution of Commonwealth grants to the States for special purposes. (Vic. and Tas.)
3. Section 92 of the Commonwealth Constitution.
 4. Development and Migration. (C'wealth.)
 5. Hours of Labour. (C'wealth, Vic, W.A. and Tas.)
 6. Statute of Westminster. (C'wealth.)
 7. Question of regularity of Conferences of Commonwealth and State Ministers and Rules governing such Conferences. (Tas)

On the first day of the Conference, after a welcome to the Delegates by the Premier of South Australia (Hon. R. L. Butler, M.P.), the Prime Minister of the Commonwealth (Rt. Hon. J. A. Lyons, C.H., M.P.) in his Opening Address said:

Inter-State Trade.

In the forefront of our programme is the situation arising from the recent Privy Council decision in what is known as the James Dried Fruit Case. The interests affected are Commonwealth-

wide, and the people will expect this Conference to decide what action shall be taken, following that very important decision. For some years prior to the delivery of this judgment it was thought that Section 92 of the Commonwealth Constitution, which provides that trade, commerce and intercourse among the States shall be absolutely free, operated only in respect of the States, and did not prevent the enactment of legislation by the Commonwealth imposing restrictions upon such trade, commerce and intercourse. This view was based upon a decision of the High Court given some 16 years ago¹—a decision which has since been followed by the High Court in many cases.²

Statute of Westminster.—After referring to the subjects of the financial relations between the Commonwealth and the States and hours of work, Mr. Lyons said:

Another matter upon which it is desirable that this Conference should record its views is the adoption by Australia of the Statute of Westminster. The Commonwealth Government is of opinion that the time has now come when the Statute should be adopted, and it has circulated the Bill among the State Governments for their review. The measure is designed to give precise legal form to the conception of equal national status in the British Commonwealth, and to terminate the operation of all rules of law and constitutional conventions inconsistent therewith. The Statute is already in force in Canada, South Africa and the Irish Free State. It has not yet been adopted by Newfoundland, New Zealand and Australia, and these Dominions are under no compulsion to adopt it unless they see fit. As far as Australia is concerned, it is clear that the growing responsibilities in regard to external affairs make it desirable that the basic relations of the nations of the British Commonwealth should be uniform. . . . Australia being a Federation, care has been taken to see that the wording does not disturb the constitutional relationship existing as between the Commonwealth and the States or between them and the Crown. When the draft measure was first under discussion at Westminster, some of the States expressed fears that their rights, especially in regard to access to the Crown, were imperilled. Amendments were introduced to allay these fears and the Statute as it stands today is believed to afford full assurance.³

Press.—The first action of the Conference was to resolve that the Press be admitted, after which Sub-Committees were appointed to deal with the subjects already enumerated.

Inter-State Trade: Section 92 of the Constitution.—After dealing with the questions of the financial relations between the Commonwealth and the States and the Federal Aid Roads Agreement, the Conference on Thursday, August 27, when resuming at 10.30 a.m., considered the question of section 92 of the Commonwealth Constitution as affected by

¹ *W and A McArthur Ltd. v. Queensland* (1920), 28, C.L.R. 530.

² Conference Report, p. 7.

³ Conf. Rep., pp. 9-10.

the recent decision of the Judicial Committee of the Privy Council in the James case, to which the Prime Minister made reference in his Opening Address.

Interesting and instructive as are many of the speeches made at the Conference on this subject, space only admits of very brief extracts from such debate being given here.

Towards the conclusion of this debate, the Commonwealth Attorney-General and Minister of Industry (Hon. R. G. Menzies, K.C., M.P.) indicated six suggested amendments of the Constitution to deal with the problems under discussion, namely:

- (1) A proposal to confer full trade and commerce power on the Commonwealth, with freedom from the provisions of Section 92.
- (2) An amendment of Section 92 to provide that it shall not bind the Commonwealth, the Commonwealth trade and commerce power being otherwise left as it is.

The second is the one I referred to as, in substance, restoring the position which existed before the Privy Council gave its decision.

- (3) An amendment to confer on the Commonwealth an additional power, not limited by Section 92, in some such terms as this:

"The regulation of trade and commerce, whether external or internal, in relation to the organized marketing of primary produce within the Commonwealth"

- (4) An amendment to set up in the Constitution, a power in relation to the marketing of goods, on the model of the Financial Agreement power. It might be stated in approximately the following terms:

- (1) The Commonwealth may, on the recommendation of the Inter-State Commission, make agreements with the States with respect to the regulation and control of the marketing of any primary produce: Provided that any such agreement shall not have any force or effect unless—

(a) It is made with all the States in which the primary produce is produced and from which it is exported; and,

(b) The agreement is approved by the Parliament of the Commonwealth and by the Parliament of each of the States with which the agreement has been made.

- (2) The Parliament may make laws for the carrying out by the parties thereto of any such agreement.
- (3) Any such agreement and any laws made by the Parliament under this section shall have effect, notwithstanding the provisions of sections 92 and 99.
- (5) An amendment to Section 92 to provide that the States should not be bound by it where the State legislation in

question provides for the organized marketing of primary produce within the State.

- (6) An amendment along the lines of the one suggested heretofore by New South Wales, that is, to substitute for Section 92 some such words as the following.

“A State shall not impair the freedom of trade, commerce, and intercourse among the States and the Territories of the Commonwealth by any discriminatory law or executive act, nor shall a State impose any pecuniary impost on any goods coming into that State from any other State or Territory of the Commonwealth.”

During the course of his speech Mr. Menzies said, “The Commonwealth, I suggest, has made it perfectly clear that it recommends that the Constitution be amended.”¹

The Premier of Queensland (Hon. W. Forgan Smith, LL.D., M.L.A.) then moved:

That the Conference meet tonight in Committee to determine the methods that may be adopted to continue the principles involved in orderly marketing, including the problem of the amendment of the Constitution.²

which, after being seconded, was agreed to.

In Committee.

The Premier of Queensland moved:

That this Conference is of opinion that the Commonwealth Government should exercise its legislative authority with reference to bounties and excise in order to preserve to primary producers those standards of prices which the various marketing Acts, now declared to be invalid, sought to attain,³—which motion was seconded.

Chairman's Ruling.—The Chairman, however, ruled the motion out of order on the grounds that it was in conflict with the authority given to the Committee by the adoption of Mr. Forgan Smith's (the Queensland Premier) earlier motion in open Conference, and that the Commonwealth Government could not accept a direction from the Conference in regard to the imposition of an excise duty, which was entirely a prerogative and responsibility of the Commonwealth.

The Acting Premier of New South Wales (Hon. M. F. Bruxner, D.S.O., M.L.A.) then moved:

That a referendum of the people be taken with a view to securing an amendment of the Constitution to provide for orderly marketing.⁴

and the motion being seconded, it was voted upon as follows:

¹ Conf. Rep., pp. 50-51.

³ *Ib.*, pp. 53-54.

² *Ib.*, p. 54.

⁴ *Ib.*, p. 54.

For : New South Wales, Victoria, Queensland.

Against : South Australia, Western Australia, Tasmania.¹

The motion was thereupon declared negived and the Conference adjourned at 11 p.m.

Upon the Conference meeting next morning (the 28th) at 10.30 o'clock, the Chairman (the Prime Minister), during the course of certain personal explanations, which need not be dealt with here, said:

I would emphasize, as I did last night, that the legislation placed upon the Commonwealth Statute Book in regard to marketing was placed there at the request of the States and was complementary to the legislation that the States themselves had brought into operation. There was co-operation between Commonwealth and States in that matter, but as regards excise there is no co-operation—it is the responsibility of the Commonwealth alone. On those grounds I would not be prepared to submit, to this Conference, a motion containing a direction as to excise, but that is shewing no disrespect to the Conference itself.²

Statute of Westminster.—Following the references to this subject by the Prime Minister in his Opening Address,³ the Conference proceeded, on August 28, to discuss the question of the adoption by the Commonwealth Parliament of the relevant parts of the Statute of Westminster.

The Delegates chiefly taking part in the discussion of this subject were the Attorneys-General, and the subject of the debate being of Empire-wide interest, extracts from some of the speeches will be given.

During the course of the debate the Attorney-General of New South Wales (Hon. H. E. Manning, K.C., M.L.C.) stated that when this matter was being considered before, a safeguard was drafted in the following form:

Nothing in this Act shall be deemed to authorize the Parliament or Government of the Commonwealth without the concurrence of the Parliament and Government of the States concerned, to request or consent to the enactment of any Act by the Parliament of the United Kingdom on any matter which is within the authority of the States of Australia not being a matter within the authority of the Parliament or the Government of the Commonwealth of Australia.⁴

which “was omitted,” continued Mr. Manning, “not because it was unacceptable, but because it was thought that the risk was so remote that its inclusion was unnecessary.” Mr. Manning continued:

¹ Conf. Rep., p. 54.

³ *Ib.*, pp. 9-10.

² *Ib.*, p. 55.

⁴ *Ib.*, p. 76.

It was felt that subsection (2) of Section 9 was adequate. That, of course, deals with only half of the story. The other half arises if an application is made by the Commonwealth to the Imperial authorities for legislation of this kind which would vitally affect the constitutional structure of, say, New South Wales. It should be done only after New South Wales had first been informed of the request and the proposed legislation so that the State might be heard in support of, or opposition to, it.¹

The Commonwealth Attorney-General (Hon. R. G. Menzies, K.C., M.P.):

Section 9 (2) excludes any necessity for getting the concurrence of the Commonwealth. You think it ought to go further and provide that there ought to be the necessity for consultation with the States concerned in the event of such proposed legislation?¹

Mr. Manning:

Yes, when it affects a State. That would mean an amendment of the Statute of Westminster, and I do not feel justified in asking for that.¹

* * * * *

I make this a condition of the support of New South Wales—that it should be recited in the preamble to any adopting Statute. I suggest that the recital should be in some such words as these:

That whereas it would be against constitutional usage to enact any law affecting the laws of the State without consultation with the States, and whereas, in order that that should be done, it is desired and recognized as constitutionally proper and necessary that the States should be informed of the nature of the contemplated legislation and asked for their opinions thereon.¹

Mr. Menzies:

The point you are making is clear enough. I suggest that you draft your suggested recital and forward it to us for consideration.¹

Mr. Manning:

I shall do so. Section 2 of the Statute of Westminster provides: The Colonial Laws Validity Act, 1865, shall not apply to any law made after the commencement of this Act by the Parliament of a Dominion.

That can only refer to the Commonwealth.¹

Mr. Manning's suggestion was supported by the Attorney-General for Victoria (Hon. A. L. Bussau, M.L.A.), who added:

It should be considered whether the States should, like the Canadian Provinces, seek exemption from (1) the provisions of the Colonial Laws Validity Act, 1865, and (2) the provisions in the Merchant Shipping Acts requiring a reservation of certain

¹ *Ib.*, p. 76.

dominion laws for the King's assent. Special attention should also be given to the position which arises from the provisions of Section 4 of the Statute of Westminster. It has been suggested that further recognition of the Constitutional position of the States might be secured by inserting in the preamble to the Commonwealth adopting measure, as was proposed by Mr. Manning, the Constitutional convention regulating the exercise by the Commonwealth of its implied powers to request the enactment by the Imperial Parliament of measures having the force of law in Australia.¹

Mr. Bussau then quoted the preamble which had been suggested by Professor K. H. Bailey,² in his *Opinion* (copies of which had been forwarded to all the States), which preamble read as follows:

Whereas it would be in accord with the established constitutional position of the Commonwealth and the States in relation to one another that the Parliament and the Government of the Commonwealth, without the concurrence of the Parliament and Government of the State or States concerned, should not request or consent to the enactment of any Act by the Parliament of the United Kingdom on any matter other than a matter which is within the exclusive authority of the Parliament or the Government of the Commonwealth of Australia.³

Mr. Bussau then moved:

That this Conference desires the insertion in the preamble of the Commonwealth adopting the Statute of a constitutional convention regulating the exercise by the Commonwealth of its implied power to request the enactment by the Imperial Parliament of a law on a matter within the exclusive competence of the States.³

In the debate that followed the Queensland Premier was doubtful if any advantage would accrue to the Commonwealth and its people by adopting the Statute of Westminster, remarking:

There is always difficulty in laying down any inflexible form of constitution regulating the relations between one Government and another, adding the remark—"We have had evidence of that in full during the last few days."

South Australian, Western Australian and Tasmanian Delegates expressed themselves as being unable to give any definite promises on the subject without consultation with their respective Governments, and Mr. Menzies concluded the debate by urging that any criticism or suggestion that was to be made should be conveyed to the Federal Government

¹ Conf. Rep., p. 77.

² Professor of Public Law in the University of Melbourne.

³ Conf. Rep., p. 77.

within a month, so as to enable the Government to present the legislation during the coming Session, undertaking to forward to the States a copy of the new Draft Bill after he had received the requests from the States.¹

The motion was then withdrawn.

Commonwealth Constitution Convention.—The Federal Attorney-General presented to the Conference on Friday, August 28, the following report from the Sub-Committee on this subject:

The sub-committee reports that it has met and considered the matter referred to it by the Conference. The sub-committee is unanimously of opinion that the appointment of a Convention to revise the Commonwealth Constitution is not advisable at the present time.²

The Report was adopted by the Conference.

After the adoption of the reports from other Sub-Committees, the proceedings of the Conference were brought to a close by the Commonwealth Minister for External Affairs (Rt. Hon. Sir George Pearce, K.C.V.O.), who, on behalf of the Prime Minister, unavoidably absent, presented the thanks of the Conference to the Premier of South Australia, for the warm welcome and kind hospitality that had been extended to them and for the courtesy and attention they had received from the Officers of the South Australian Parliament.

The Conference terminated at 6.45 p.m., Friday, August 28, 1936.

General.—When the Fathers of Australian Federation were engaged in drawing up a Dominion Constitution, they framed it strictly on federal lines, the States delegating certain legislative powers to the Federal Parliament, as carefully enumerated in the 39 paragraphs of section 51 of the Commonwealth Constitution, which contains no corresponding sections to those of the Constitutions of Canada and South Africa, defining the subjects upon which the Provinces may only legislate. In Australia, the position is reversed, for the States may legislate upon any subject not delegated in the Constitution to the Commonwealth. The principal subjects upon which the States legislate are: health, education, police, justice, roads, development, land settlement, irrigation, mining, forestry and railways. Each State is also under its own Constitution and nominates its own Governor, without consultation with the Government

¹ A Statute of Westminster Adoption Bill was duly introduced in the Commonwealth House of Representatives on December 2, 1936, and read 1 R., but not further proceeded with that year.—[ED.]

² Conf. Rep., p. 78.

of the Commonwealth, and has its own Agent-General in London. It is, however, one of the misfortunes of government under a written constitution that problems of interpretation and defects inevitably crop up. Therefore, the people of the United Kingdom are envied their practically unwritten Constitution, capable of easy adaptation to almost every changing phase.

The 1936 decision of the Privy Council in the *James* case under consideration by the Conference, that section 92 of the Constitution does bind the Commonwealth, has disclosed a sort of legislative "no man's land," a sphere in which neither the Commonwealth nor the States may legislate, even jointly.

In fact, as the Commonwealth Attorney-General described it, in one of his many interesting and informative speeches during the Conference,—“Federation has created a gap in the total legislative powers of both Commonwealth and States.” Therefore, only an amendment of the Commonwealth Constitution, to confer full power on the Commonwealth in regard to inter-State trade and commerce, can put this right, and this can only be effected by referendum.¹

See Article VIII hereof.

VIII. AUSTRALIA—TWO IMPORTANT CONSTITUTIONAL INTERPRETATIONS

BY THE EDITOR

DURING the year under review in this Volume, the Commonwealth of Australia has been much concerned over two important judicial decisions, one by the Privy Council and the other by the High Court of Australia, which declared two Acts of the Federal Parliament invalid, and involved the introduction of Bills for the amendment of the Constitution which were subsequently submitted to Referendum but rejected.

The difficulties arose in the cases of *James v. The Commonwealth* heard before the Judicial Committee of the Privy Council, and the *King v. Burgess (ex parte Henry)* before the High Court of Australia, on appeal.

Privy Council Decision in *James v. The Commonwealth*.

The case of *James v. The Commonwealth* concerned certain marketing legislation dealing with inter-State trade¹ passed by the Federal Parliament in the exercise of its legislative power under sec. 92² of the Constitution,³ and at the request of the States, the legislation in question being the Commonwealth Dried Fruits Act, 1928-1935.⁴ The appellant, Frederick Alexander James, a fruit merchant carrying on business in the State of South Australia, commenced an action in the High Court against the Commonwealth. In his statement of claim the plaintiff alleged that purporting to act in pursuance of the Act abovementioned and the regulations and determinations made thereunder, the defendant Commonwealth:

¹ "Inter-State trade is not the exclusive domain of the Commonwealth, but is open to concurrent legislation by both Commonwealth and States."—Adelaide Conf. Rep., 1936, p. 32.

² *Trade within the Commonwealth to be free* 92. On the imposition of uniform duties of Customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free.

But notwithstanding anything in this Constitution, goods imported before the imposition of uniform duties of Customs into any State, or into any Colony which, whilst the goods remain therein, becomes a State, shall, on thence passing into another State within two years after the imposition of such duties, be liable to any duty chargeable on the importation of such goods into the Commonwealth, less any duty paid in respect of the goods on their importation

³ 63 and 64 Vict. c. 12.

⁴ Acts No. 11 of 1928—No. 5 of 1935.

- (1) had caused to be seized the plaintiff's consignments of dried fruit in the course of delivery to purchasers in New South Wales; and,
- (2) had notified shipping companies and other carriers that, if they carried dried fruits tendered for carriage by any person not holding a license under the Act abovementioned, they would incur penalties.

The plaintiff further alleged that, by determinations made under the Act, the holder of an owner's license was required to export from Australia a fixed percentage of each class of dried fruits produced by him. The plaintiff also alleged that the defendant Commonwealth was wrongfully insisting upon his taking out a license as a condition of his being allowed to sell his dried fruits in other States of the Commonwealth, and was wrongfully preventing him from fulfilling his inter-State contracts. The statement of claim claimed a declaration that the Act and regulations thereunder were *ultra vires* as contravening sec. 92 of the Constitution, together with an injunction and damages.

The defendant Commonwealth demurred to the statement of claim and the demurrer came before the full Court for hearing. In support of the demurrer the Commonwealth relied upon the decisions in *W. and A. McArthur Ltd. v. Queensland*¹ and *James v. The Commonwealth*,² as establishing that the Commonwealth was not bound by sec. 92 of the Constitution.

The High Court allowed the demurrer. In agreeing with the order proposed, Dixon, J., said³ that while he recognized the strength of the considerations which led to the previous decision of the Court in *W. and A. McArthur Ltd. v. Queensland* to the effect that the Commonwealth was not bound by sec. 92, he had never felt satisfied that they sufficed to raise a necessary implication limiting the application of sec. 92 to the States. Evatt and McTiernan, J.J., in a joint judgment,⁴ said that they were definitely of opinion that sec. 92 laid down a general rule of economic freedom and necessarily bound all authorities within the Commonwealth, including the Commonwealth itself. Their Honours added that although they were of opinion that the Commonwealth had no legal authority to maintain its prohibitions of the inter-State marketing of dried fruits, the ruling in *McArthur's* case to the contrary should be followed until the Privy Council finally dealt with the matter.

¹ (1920) 28 C.L.R. 530.

³ (1935) 52 C.L.R. 592.

² (1928) 41 C.L.R. 442.

⁴ (1935) 52 C.L.R. 602-3.

On December 4, 1935, the Privy Council gave special leave to the plaintiff to appeal. The States of New South Wales, Queensland and Victoria obtained leave to intervene in support of the contentions of the Commonwealth and the States of Tasmania and Western Australia in support of the contentions of the appellant.

The case was heard before the Privy Council on May 4, 5, 7, 8, 11, 12, 14, 18, 19 and July 17, 1936.¹

Their Lordships in their judgment held that sec. 92 applied to the Commonwealth and that the Dried Fruits Act and regulations thereunder should be declared invalid as contravening the said section; and humbly so advised His Majesty. Their Lordships observed that they were giving effect to the declared opinion of three of the five Judges of the High Court who sat in the case, while the other two seemed to indicate that their individual opinions tended the same way. But that all five Judges thought they should follow what had been regarded as the law in the High Court for many years, and leave its reconsideration to the Judicial Committee, where, as stated in *James v. Cowan*,² it was an open question and must be dealt with on that footing.

Decision of High Court of Australia in *The King v. Burgess (Ex parte Henry)*.—This case concerned the question of air navigation—a pilot flying without a license—as laid down by the Commonwealth Air Navigation Regulations (Statutory Rule No. 33 of 1921). Judgment was given on November 10 in the High Court of Australia, which declared, on appeal, the Commonwealth Air Navigation Act³ unconstitutional. This appeal raised the Question whether the Commonwealth Parliament had power to legislate with respect to flying operations carried on within the limits of a single State.

The conclusions come to by such Court on the whole case were:

- (1) That the Commonwealth Parliament has no general control over the subject matter of civil aviation in the Commonwealth.
- (2) That the Commonwealth has power both to enter into International agreements and to pass legislation to secure the carrying out of such agreements according to their tenor even although the subject matter of the agreement is not otherwise within Commonwealth legislative jurisdiction.
- (3) That the subject matters of these agreements may properly include such matters as, *e.g.*, suppression of traffic in drugs, control of armament, regulation of labor conditions and control of air navigation.

¹ (1936) 55 C.L.R. 1-62.

² (1932) A.C. 542; 47 C.L.R. 386.

³ No. 50 of 1920.

- (4) That it is an essential condition of the power to carry out such international agreements that the local legislation should be in conformity with the terms of the agreement.
- (5) That Section 4 of the Air Navigation Act¹ is invalid so far as it purports to authorize the Executive to control civil aviation in the Commonwealth, but is valid so far as it authorizes the executive to carry out within Australia the International Air Conventions.
- (6) That in their present form the regulations made by the Commonwealth Executive are invalid because they are not stamped with the purpose of executing the Air Conventions, but are stamped with the unauthorized purpose of controlling civil aviation throughout the Commonwealth.

The Court therefore held that the regulations in their present form were *ultra vires* the first part of sec. 4 of the Air Navigation Act and were void, and that even if they could be regarded as having some application to the territories, the present conviction had no relation to the territories and could not be supported. The result was that the appeal was allowed and the conviction quashed.

The finding is given more fully in *The King v. Burgess*, as the judgment (the reasons for which cover 84 typewritten folios) is looked upon in Australia as of a very far-reaching nature, giving a much extended interpretation to the Commonwealth's external affairs powers and conferring on it legislative power hitherto unavailable. Two of the Judges (Evatt and McTiernan) held that if the Commonwealth Air Navigation Act had been consistent with the International Air Convention it would have been valid by virtue of the Commonwealth's powers in external affairs.

Proceedings in Parliament upon Amendments to Constitution.

—The decisions in both these cases formed the subject of amendments to the Commonwealth Constitution, namely, in the dried fruits case, the addition to sec. 92 thereof, of the following:

92A. The provision of the last preceding section shall not apply to laws with respect to marketing made by² the Parliaments in the exercise of any powers vested in the Parliament by this Constitution.

and in the aviation case, the addition to sec. 51 thereof (which enumerates the spheres in which the Commonwealth shall have power to make laws) of the words:

Air navigation and aircraft.

¹ No. 50 of 1920.

² Subsequently amended by the insertion after this word "by" of the words, "or under the authority of."

The Bills were entitled, respectively, the Constitution Alteration (Marketing) Bill and the Constitution Alteration (Aviation) Bill of 1936 and the debates thereon in both the Senate and the House of Representatives "From the Parliamentary Debates" have been published officially.¹

The Constitution Alteration (Marketing) Bill.—The following amendment was moved in the House of Representatives to the Question for the Second Reading of this Bill on October 22, by Mr. J. Curtin, Leader of the Opposition (Fremantle: Western Australia):

That all the words after "That" be omitted and the following words substituted:

this House is of opinion that the proposed alteration of the Constitution is inadequate, and that the Referendum costing approximately £100,000, should have for its purpose such alteration of the Constitution as would grant to this Parliament wider and more comprehensive powers.

After prolonged debate, however, the amendment was defeated on division by a majority of 14 in a House of 66 Members. The Bill was read the Second Time, on October 29, when the House went into Committee.

The Attorney-General (the Hon. G. R. Menzies)² during the consideration of Clause 2, moved to amend 92A, as above quoted, by the insertion: after the word "by" where first occurring, the words, "or under the authority of," which was agreed to. Another amendment was moved by Mr. Blackburn (Bourke: New South Wales) to add to clause 92A, as amended, the following proviso:

Provided that no law with respect to the marketing of any goods produced or manufactured in any State or States shall be made by the Parliament of the Commonwealth, until the Parliament or Parliaments of such State or States have referred to the Parliament of the Commonwealth the matters of—

- (1) the regulation of the price at which such goods are sold in such State or States, and
- (2) the regulation of the wages, hours and other conditions of employment of workers employed in or in connection with the production or manufacture of such goods.

Mr. Blackburn's amendment was defeated by a majority of 17 in a House of 61 members, the Bill was reported with an amendment, which was adopted, and the question for the

¹ Constitution Alteration Bills, F. 21, 407 pp. Government Printer, Canberra, F.C.T.

² Since raised to the Privy Council.

Third Reading put to the vote. Whereupon Mr. Speaker said:

The result of the division being Ayes 45; Noes 21, I certify that the Third Reading of the Bill has been agreed to by an absolute majority of the Members of the House, as required by the Constitution.

The Bill was then read the Third Time and ordered to be carried by messenger to the Senate for its concurrence.

The Senate read the Bill the First Time on November 10, the Second Reading being taken on November 12, 13 and 18, when the Second Reading was agreed to by a majority of 22 in a House of 30 Senators, and the House went into Committee on the Bill. Upon the consideration of clause 2,¹ Senator Badman (South Australia) proposed the following amendment, namely, that the word "marketing" be left out, and the following words be substituted:

the marketing of either raw or processed primary products, being foodstuffs.

Progress was reported and the Bill was again taken in Committee on November 19, when Senator Badman's amendment was negatived by a majority of 10 out of a House of 30 Senators. Another amendment was proposed to this clause by Senator Payne (Tasmania), namely, to insert after "exercised" the words:

at the request of States concerned in the disposal of products overseas.

Upon the amendment being put to the vote it was defeated by a majority of 10 in a House of 30 Senators, the clause was then agreed to and the Bill reported without amendment.

The Third Reading took place on December 2, the question being agreed to with a majority of 23 in a House of 33 Senators, the President stating:

There being more than an absolute majority of the whole Senate voting in the affirmative, as required by the Constitution, I declare the question resolved in the affirmative.

The Bill was then read a Third Time and a Message ordered to be carried to the House of Representatives conveying the Senate's concurrence in the said Bill.

The Constitution Alteration (Aviation) Bill was formally

¹ i.e., 92A as amended.

introduced into the House of Representatives on November 12, by the Attorney-General (the Hon. R. G. Menzies), the motion for leave reading as follows:

That he have leave to bring in a Bill for an Act to alter the Constitution with respect to air navigation and aircraft.

Whereupon Mr. Curtin proposed the addition of the following words to the motion for leave:

trade and commerce, industrial matters, broadcasting and television.

After debate, the House divided on the amendment as follows: Ayes, 22; Noes, 32, the motion for leave was agreed to and the Bill read the First Time. The Second Reading was taken on the following day, and continued on November 18, when it was agreed to and the House went into Committee, from which the Bill was reported without amendment and read the Third Time on November 18, by a majority of 43 in a House of 57, the Speaker making his statement, as on the Third Reading of the Marketing Bill.

The Bill was received by the Senate on November 18, the Second Reading and Committee stage being taken on the following day. The Bill was read the Third Time on December 2, when, *after the bells having been rung*, Mr. President stated:

There being no dissentient voice, and there being more than an absolute majority of Honourable Senators present as required by the Constitution, I declare the question resolved in the affirmative.

The Bill was then read the Third Time and a Message was carried to the other House informing it of the Senate's concurrence.

Referendum.—As both Bills involved amendments of the Commonwealth Constitution, it was necessary for them to be submitted to Referendum according to law in each State, to the electors qualified to vote for the election of Members of the Commonwealth House of Representatives. Amendment was necessary in the case of the Aviation Bill, in order to permit Parliament to legislate outside the Air Convention, in controlling intra-State aviation. The following are the figures published in the *Commonwealth Gazette* of April 15, 1937, by the Chief Electoral Officer for the Commonwealth.

The Referendums took place on March 6, 1937:

Constitution Alteration (Aviation), 1936.

| <i>State.</i> | <i>Number of Votes Given IN FAVOUR of the Pro- posed Law.</i> | <i>Number of Votes Given NOT IN FAVOUR of the Proposed Law.</i> | <i>Number of Ballot-papers rejected as INFORMAL.</i> |
|-------------------------------------|---|---|--|
| New South Wales .. | 664,589 | 741,821 | 55,450 |
| Victoria | 675,481 | 362,112 | 36,685 |
| Queensland .. | 310,352 | 191,251 | 18,330 |
| South Australia .. | 128,582 | 191,831 | 21,031 |
| Western Australia .. | 100,326 | 110,529 | 10,977 |
| Tasmania | 45,616 | 71,518 | 7,882 |
| Totals for the Com- monwealth .. | 1,924,946 | 1,669,062 | 150,355 |

Constitution Alteration (Marketing), 1936.

| <i>State.</i> | <i>Number of Votes Given IN FAVOUR of the Pro- posed Law.</i> | <i>Number of Votes Given NOT IN FAVOUR of the Proposed Law.</i> | <i>Number of Ballot-papers rejected as INFORMAL.</i> |
|-------------------------------------|---|---|--|
| New South Wales .. | 456,802 | 896,457 | 108,601 |
| Victoria | 468,337 | 537,021 | 68,920 |
| Queensland .. | 187,685 | 296,302 | 35,946 |
| South Australia .. | 65,364 | 248,502 | 27,578 |
| Western Australia .. | 57,023 | 148,308 | 16,501 |
| Tasmania | 24,597 | 87,798 | 12,621 |
| Totals for the Com- monwealth .. | 1,259,808 | 2,214,388 | 270,167 |

But, as the voting on the aviation amendment did not also show a majority of the total votes in a majority of the States—four States having majorities against it—this amendment was also rejected. Voting is compulsory.

IX. THE IRISH FREE STATE CONSTITUTION¹

BY THE EDITOR

CONSIDERABLE constitutional activity has been taking place in the Irish Free State since the publication of our last yearly Volume. During the year under review in this issue, certain Articles of the Constitution² have been amended by the discontinuance of University representation after the next General Election;³ by the abolition of the Senate,⁴ and the removal from the Constitution of certain executive functions vested in the Crown.⁵ Although the last-mentioned Act appears as the 27th amendment, owing to the practice of numbering the amendment in the Bill, this is actually the 25th amendment, as the Bills for the 19th and 25th amendments did not become law. Appended to this Article is a schedule of the amendments to the Constitution, shewing also the nature of the two Bills abovementioned.

Just as this Volume of the JOURNAL was about to go to press, however, a "Draft Constitution" was "approved" by Dáil Eireann, or Chamber of Deputies (now under a unicameral constitution), of a very wide and far-reaching nature, and submitted to a Referendum, or plebiscite, to be referred to later.

In order to view the question of the present constitutional situation in the Irish Free State in better perspective, however, it is necessary first to be acquainted with the manner in which the present Constitution (1922) was brought into being. The existing Constitution of the Irish Free State was enacted on October 25, 1922, by Dáil Eireann, a provisional body, and came into operation on December 6 of the same year by Royal Proclamation of that date pursuant to Article 83 thereof. Its 83 Articles were contained in the First Schedule to the Constitution Act (Irish Act No. 1 of 1922), which consists of 3 sections. The Constitution Act is also scheduled to the British Act⁶ for implementing the Treaty between Great Britain and Ireland signed in London December 6, 1921. The second schedule to the Constitution Act recites the Articles of Agreement of such Treaty, which was registered by the

¹ See also JOURNAL, Vols. II, 10, 11; III, 21-23; and IV, 28-30.

² Act No. 1 of 1922.

³ Constitution (Amendment No. 23) Act (No. 17 of 1936).

⁴ Constitution (Amendment No. 24) Act (No. 18 of 1936).

⁵ Constitution (Amendment No. 27) Act (No. 57 of 1936).

⁶ 13 Geo.V, c. 1.

Government of the Irish Free State, but not by the British Government, with the League of Nations, July 11, 1924. Such Articles were scheduled to the British Act of 1922,¹ the Irish Free State Agreement Act. There were also other agreements made between Great Britain and the Irish Free State, supplementing and amending the Treaty, in 1924,² 1925³ and 1929.⁴

To quote from the preamble of the Constitution Act this Chamber of Deputies (in Irish, Dáil Éireann), in enacting the Constitution, sitting as a Constituent Assembly:

in this Provisional Parliament, acknowledging that all lawful authority comes from God to the people and in the confidence that the National life and unity of Ireland shall thus be restored, hereby proclaims the establishment of the Irish Free State (otherwise called Saorstát Éireann), and in the exercise of undoubted right, decrees and enacts as follows:

Section 1 of the Constitution Act states that the Constitution set forth in the First Schedule to the Act shall be the Constitution of the Irish Free State.

Section 2 of the Constitution Act provides that the Constitution shall be construed with reference to the Treaty, and since this section has an important bearing upon the provisions of the Constitution, it is given at length:

2. The said Constitution shall be construed with reference to the Articles of Agreement for a Treaty between Great Britain and Ireland set forth in the Second Schedule hereto annexed (hereinafter referred to as "the Scheduled Treaty") which are hereby given the force of law, and if any provision of the said Constitution or of any amendment thereof, or of any law made thereunder, is in any respect repugnant to any of the provisions of the Scheduled Treaty, it shall, to the extent only of such repugnancy, be absolutely void and inoperative and the Parliament and the Executive Council of the Irish Free State (Saorstát Éireann) shall respectively pass such further legislation and do all such other things as may be necessary to implement the Scheduled Treaty.

It was subsequently provided by Irish Act⁵ that all references in section 2, to the Treaty of 1921, shall be construed and have effect as references to the said Treaty as amended by the Agreement set forth in the Schedule to such Act, and accordingly all references in the Constitution to "the Scheduled

¹ 12 Geo. V, c. 4.

² 14 and 15 Geo. V, c. 41 and Irish Act No. 51 of 1924.

³ 15 and 16 Geo. V, c. 77 and Irish Act No. 40 of 1925.

⁴ 20 Geo. V, c. 4 and Irish Act No. 36 of 1929.

⁵ No. 40 of 1925.

Treaty " must be construed as references to such Treaty as amended by the said Agreement.

It is proposed first to take the amendments of the present Constitution and thereafter to give an outline of the new " Draft Constitution."

Constitution.—As the title of the Act for the 18th constitutional amendment explains itself, and the Act for the abolition of the Seanad is dealt with in the succeeding Article in this Volume, only the details of Constitution (Amendment No. 27) Act remain for notice in connection with constitutional amendments in 1936. It is not a function of this Society to give expression of opinion for or against any particular constitutional provision, or point of Parliamentary practice, in its application to any special country, therefore the pros and cons of this 27th amendment will not be gone into here, but each amendment will be quoted so that the reader may have reference thereto.

The Act for the 27th Constitutional amendment, which was passed toward the end of the year by the Dáil (the late Lower and now the only Legislative Chamber under the Constitution), is entitled " an Act to effect certain amendments of the Constitution in relation to the Executive Authority and power and in relation to the performance of certain Executive functions." This Act contains two sections, the amendments to the Constitution being embodied under ten items of the Schedule.

The *first* item deleted from section 4 (2) of Article 2A, the words, " Governor-General acting on the advice of the." But, presumably by inadvertence, similar words occurring in section 25 of the same Article were not deleted.

The *second* item deleted from Article 12 the words " the King and," thus withdrawing the King as a constituent part of the Legislature.

The *third* item amended Article 24 by striking out the words, " Representative of the Crown in the name of the King " and substituted " Chairman of Dáil Eireann on the direction in writing of the Executive Council signed by the President of the Executive Council." This amendment removed from the Crown the right to summon or dissolve the Legislature and conferred such power on the Chairman of the Legislature itself upon the authority given in the substituting words of the amendment, although, once the Legislature has been dissolved, there would be no Chairman of it, and therefore no person with constitutional right and duty to summon it, unless special provision has been made in some other law.

The *fourth* item amended Article 41 by deleting the following words:

The Executive Council shall present the same to the Representative of the Crown for the signification by him, in the King's name, of the King's assent, and such Representative may withhold the King's assent or reserve the Bill for the signification of the King's pleasure: Provided that the Representative of the Crown shall in the withholding of such assent to or the reservation of any Bill, act in accordance with the law, practice, and constitutional usage governing the like withholding of assent or reservation in the Dominion of Canada.

The words therefore remaining in Article 41 are:

"So soon as any Bill shall have been passed by Dáil Eireann," and the 27th Amendment Act adds the following words thereto: "the Chairman of the Dáil Eireann shall sign such Bill and the same shall become and be law as on and from the date of such signature."

The *fifth* item amended Article 42 by deleting the words "received the King's assent" and substituting the words, "been signed by the Chairman of the Dáil Eireann;" and by deleting the words "Representative of the Crown," wherever they occur, and substituting, "Chairman of Dáil Eireann."

The *sixth* item amended Article 51¹ as follows, the words inserted being shown in italics and those deleted within square brackets:

[The Executive Authority of the Irish Free State (Saorstát Eireann) is hereby declared to be vested in the King, and shall be exercisable, in accordance with the law, practice and constitutional usage governing the exercise of the Executive Authority in the case of the Dominion of Canada, by the Representative of the Crown.] There shall be a Council to [aid and advise in the government] *exercise the executive authority and power of the Irish Free State (Saorstát Eireann), to be styled the Executive Council; Provided that it shall be lawful for the Executive Council, to the extent and subject to any conditions which may be determined by law to avail, for the purposes of the appointment of diplomatic and consular agents and the conclusion of international agreements of any organ used as a constitutional organ for the like purposes by any of the nations referred to in Article 1² of this Constitution.* The Executive Council shall be responsible to Dáil Eireann, and shall consist of not more than twelve³ nor less than five Ministers appointed [by the Representative of the Crown on the nomination of the President of the Executive Council] *in the manner hereinafter provided.*

¹ See also Ministers and Secretaries Act (No. 16 of 1924) and Ministers and Secretaries (Amendment) Act (No. 6 of 1928).

² Article 1 reads: The Irish Free State (otherwise hereinafter called or sometimes called Saorstát Eireann) is a co-equal member of the Community of Nations forming the British Commonwealth of Nations.

³ Altered from 7 to 12 by Amendment No. 5 Act.

The *seventh* item amended Article 53 as follows, the words inserted being in italics and those deleted within square brackets:

The President of the Council shall be [appointed on the nomination of] *elected by* Dáil Eireann. He shall nominate a Vice-President of the Council, who shall act for all purposes in the place of the President, if the President shall die, resign, or be permanently incapacitated, until a new President of the Council shall have been elected. The Vice-President shall also act in the place of the President during his temporary absence. The other Ministers who are to hold office as members of the Executive Council shall be appointed [on the nomination of] *by* the President, *with the assent of* Dáil Eireann, and he and the Ministers [nominated] *appointed* by him shall retire from office should he cease to retain the support of a majority in Dáil Eireann, but the President and such Ministers shall continue to carry on their duties until their successors shall have been *respectively elected and appointed*: Provided, however, that the Oireachtas shall not be dissolved on the [advice] *direction* of an Executive Council which has ceased to retain the support of a majority in Dáil Eireann.

The *eighth* item amended Article 55 as follows, the words inserted being in italics and the words deleted within brackets:

Ministers who shall not be members of the Executive Council may be appointed [by the Representative of the Crown.¹ Every such Minister shall be nominated] by Dáil Eireann on the recommendation of a Committee of Dáil Eireann chosen by a method to be determined by Dáil Eireann, so as to be impartially representative of Dáil Eireann. Should a recommendation not be acceptable to Dáil Eireann, the Committee may continue to recommend names until one is found acceptable. The total number of Ministers, including the Ministers of the Executive Council, shall not exceed twelve.

The *ninth* item deleted Article 60 which read as follows:²

[The Representative of the Crown, who shall be styled the Governor-General of the Irish Free State (Saorstát Eireann), shall be appointed in like manner as the Governor-General of Canada and in accordance with the practice observed in the making of such appointments. His salary shall be of the like amount as that now payable to the Governor-General of the Commonwealth of Australia and shall be charged on the public funds of the Irish Free State (Saorstát Eireann) and suitable provision shall be made out of those funds for the maintenance of his official residence and establishment.]

¹ Following this word, were the words "and shall comply with the provisions of Article 17 of this Constitution," until struck out by Amendment No. 10 Act.

² See also Governor-General's Salary and Establishment Act (No. 14 of 1923).

The *tenth* item amended Article 68¹ by transferring the appointment of all judges in pursuance of the Constitution, from the Representative of the Crown on the advice of the Executive Council to the Executive Council itself.

Another Act of Constitutional interest passed by the Dáil during the year under review in this Volume was the Executive Authority (External Relations) Act.² This Act made provision, in accordance with the Constitution, for the exercise of the Executive Authority of the Irish Free State, "in relation to certain matters in the domain of external relations and for other matters connected with the matters aforesaid."

After providing, in section 1, for the appointment by the Executive Council of diplomatic and consular representatives in other countries, and, by section 2, for every international agreement concluded on behalf of the Irish Free State to be concluded by or on the authority of the Executive Council, the Act, in section 3, dealt with the exercise of the Treaty-making power conferred by the preceding section, as follows:

3—(1) It is hereby declared and enacted that, so long as Saorstát Éireann is associated with the following nations, that is to say, Australia, Canada, Great Britain, New Zealand and South Africa, and so long as the king recognized by those nations as the symbol of their co-operation continues to act on behalf of each of those nations (on the advice of the several Governments thereof) for the purpose of the appointment of diplomatic and consular representatives and the conclusion of international agreements, the King so recognized may, and is hereby authorized to, act on behalf of Saorstát Éireann for the like purposes as and when advised by the Executive Council so to do.

(2) Immediately upon the passing of this Act, the instrument of abdication executed by His Majesty King Edward the Eighth on the 10th day of December 1936 (a copy whereof is set out in the schedule to this Act) shall have effect according to the tenor thereof and His Majesty shall, for the purposes of the foregoing subsection of this section and all other (if any) purposes, cease to be king, and the king for those purposes shall henceforth be the person who, if His said Majesty had died on the 10th day of December 1936, unmarried, would, for the time being, be his successor under the law of Saorstát Éireann.

Then followed the Schedule to the Act, containing the instrument of abdication, signed by King Edward VIII, which instrument was expressed to take effect from the date of the passing of the Irish Act (December 11, 1936).

Questions in the House of Commons.—On January 25, 1937, in the House of Commons,³ Sir Donald Ross, Bart. (represent-

¹ See also Courts of Justice Act (No. 10 of 1924).

² Act No. 58 of 1936.

³ 319 H.C. Deb. 5. s. 569.

ing Londonderry: Northern Ireland), asked the Prime Minister (Rt. Hon. Stanley Baldwin):

whether the claim of the Government of the Irish Free State to be a republic as regards internal affairs, and a Dominion as regards external affairs, is recognized by His Majesty's Government?

To which Mr. Baldwin replied:

The question of the effect of the recent Irish Free State legislation on that country's relations to the British Commonwealth of Nations is now under examination, and until the examination is complete no statement can be made on the matter.

The same Member asked the Secretary of State for Dominion Affairs¹ (Rt. Hon. Malcolm MacDonald):

whether his conversations with Mr. de Valera covered matters affecting the interests of Northern Ireland; and, if so, whether he has consulted the Government of Northern Ireland thereon?

To which Mr. MacDonald replied:

In the course of our recent conversations Mr. de Valera urged strongly that steps should be taken towards the establishment of a United Ireland. No scheme was, however, put forward, and the matter was not discussed further. The second part of the question does not, therefore, arise.

The "Draft Constitution" of 1937.—Although the treatment of this subject really appertains to Volume VI (for 1937) of this JOURNAL, as the new draft constitution for Ireland has just arrived, the going to press of the present Volume is being held back in order to make the reference to this subject as up to date as possible. This Bill, which bears the title "Draft Constitution," was introduced into Dáil Éireann on March 10, 1937, by the President of the Executive Council (Mr. Eamon de Valera). It was stated by his Parliamentary Secretary² that when the measure reached its final stage, it would not be passed as an Act but approved as a recommendation to the Irish people for agreement by them and that the Standing Orders would be adapted to that purpose.

The second reading was moved on May 11, 1937. After minor alterations in Committee and on Report, which alterations have been embodied in this article in regard to each constitutional provision dealt with, the Draft was finally "approved" by Dáil Éireann on June 14, 1937. It was submitted to a plebiscite under the provisions of a specially passed Plebiscite (Draft Constitution) Act, 1937, which provided that the plebiscite should be held on the same day as the General Election (July 1,

¹ *Ibid.*

² *The Times*, March 11, 1937.

1937). The result of the plebiscite, or Referendum, was: Total electorate, 1,771,147; Votes for, 686,042¹; Votes against, 528,296; Spoiled votes, 116,196; Majority for, 157,747.

The result of the General Election was: De Valera Party, 69; Cosgrave Party, 48; Labour, 13; Independents, 8; Total, 138.

The Bill as finally amended and "approved" by Dáil Éireann covers 117 pages, those on the left hand giving the English and those on the right hand, the Irish text; the latter is printed in Irish characters. The document contains 63 Articles, as the sections are called, of which 13 deal with Parliament, and 3 with the office and duties of President, and references to his powers and functions are included in many other Articles throughout the Bill.

Although it is the purpose of this Society only to deal with constitutional law in its particular relation to Parliament, its powers and privileges, etc., it is nevertheless necessary to give an outline of the "Draft Constitution," in order more clearly to locate the position of Parliament thereunder. The "Draft Constitution" opens with the following Preamble:

In the Name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred,

We, the people of Éire,

Humbly acknowledging all our obligations to our Divine Lord, Jesus Christ, Who sustained our Fathers through centuries of trial, Gratefully remembering their heroic and unremitting struggle to regain the rightful independence of our Nation,

And seeking to promote the common good, with due observance of Prudence, justice and charity, so that the dignity and freedom of the individual may be assured, true social order attained, the unity of our country restored, and concord established with other nations,

Do hereby adopt, enact, and give to ourselves this Constitution.

Article 1 asserts the sovereign rights of the Irish Nation, the following Article defines its boundaries as embracing the whole of Ireland, its islands and the territorial seas, and Article 3 deals with the extra-territoriality of legislation.

The name of the State, which is declared to be a sovereign, independent, democratic state, is to be "Éire, or, in the English language, Ireland."² Article 6 defines the powers of government, 7 the flag, "the tricolour of green, white and orange," and 8 states that Irish is the national and the first official language, while English is recognized as the second official language, with special provision for the use of these languages.³ Other Articles deal

¹ These represent 39 per cent. of the electorate

² Arts. 4 and 5.

³ See also Art. 25 (4) (5); Art. 63.

with Nationality (9); State Rights (10) and Revenues (11). Article 25 deals with the promulgation, etc., of laws; 26 with reference of Bills to the Supreme Court; and 27, with submission of Bills to the people by Referendum. The Executive Government is to consist of 7-15 Ministers, of whom not more than 2 may be Senators, with the right to sit and speak in both Houses. The Government, whose powers are defined, is to be responsible to Dáil Eireann (Art. 28). Article 29 provides for international relations and for international agreements (with the exception of agreements of a technical and administrative character) to be laid before the Dáil; and Article 30 deals with the office of Attorney-General, the holder of which is not to be a member of the Government.

Article 33 provides for the office of Comptroller and Auditor-General. Articles 34 to 38 deal with the administration of justice. Article 37 reads:

Nothing in this Constitution shall operate to invalidate the exercise of limited functions and powers of a judicial nature, in matters other than criminal matters, by any person or body of persons duly authorized by law to exercise such functions and powers, notwithstanding that such person or such body of persons is not a judge or a court appointed or established as such under this Constitution.

Article 38 also includes provision for the establishment of military tribunals and special courts, otherwise "no person is to be tried in any criminal charge without a jury." Article 39 defines treason, and Article 40 the personal rights of the citizen; Article 41 deals with "the Family"; 42, with education; 43, with private property; and Article 44 with Religion, with recognition by the State of the special position of the Holy Catholic Apostolic and Roman Church; and 45 declares Social Policy.

Amendment of the Constitution¹ is to be effected by legislation introduced into the Dáil, passed by both Houses and submitted to Referendum by the people. No "tacking" is to be allowed in regard to any such Bill. The Referendum is provided for in Article 47. For amendment of the Constitution a majority of the votes of the people is necessary. In regard to other subjects of referendum a veto can only be effective if the majority amounts to not less than 35 per cent. of the voters on the Register, and for the purposes of Article 27 will not be held to have been approved by the people unless

¹ Art. 46.

vetoed by them, *vide* Article 47 (2) (1). Every citizen possessing franchise rights for the Dáil has the right to vote at a Referendum.

Article 48 is to repeal the Constitution of Saorstát Éireann in force immediately prior to the date of the coming into operation of the "Draft Constitution," as well as the constitution of the Irish Free State (Saorstát Éireann) Act, 1922, in so far as that Act, or any provision thereof, is then in force, and Article 49 provides for the continuance of powers, etc., under the present Constitution, also under the "Draft Constitution." Sub-article (1) of this Article reads:

All powers, functions, rights and prerogatives whatsoever exercisable in or in respect of Saorstát Éireann immediately before the 11th day of December 1936, whether in virtue of the Constitution then in force or otherwise, by the authority in which the executive power of Saorstát Éireann was then vested, are hereby declared to belong to the people.

Article 50 deals with the continuance of laws, and 51, which is of a temporary nature, allows for the amendment of any provisions of "Draft Constitution" (with the exception of Article 46 thereof) by the Parliament within 3 years of the first President entering upon his office. Article 52 deals with the transitory period; 53 with the first general election for the new Seanad; by 54 the Dáil then in existence becomes the new Dáil, whose Speaker continues in office; and 55 provides for the Parliament being unicameral until the new Seanad is appointed and for other transitory purposes. Under Articles 56 and 58 to 61 inclusive, the Government, its departments and officials, Judges, Attorney-General, Comptroller and Auditor-General and police and defence forces in office immediately before the coming into operation of the "Draft Constitution" are to continue upon the "Draft Constitution" coming into force. By Article 62 it is provided that the "Draft Constitution" shall come into operation:

- (i) on the day following the expiration of a period of 180 days after its approval by the people signified by a majority of the votes cast at a plebiscite thereon held in accordance with law; or,
- (ii) on such earlier day after such approval as may be fixed by Resolution of Dáil Éireann elected at the general election the polling for which shall have taken place on the same day as the said plebiscite.

The last article—63—provides for the enrolment of the "Draft Constitution" in the office of the Registrar of the Supreme Court and that in case of conflict between the Irish and English texts, the Irish text is to prevail.

Parliament.—Having provided the framework for the consideration of the position of the Legislature under the “Draft Constitution,” we will now view the draft more closely.

Article 15 (1) (2) defines Parliament (the Oireachtas) as consisting of the President and two Houses—namely, a House of Representatives (Dáil Eireann) and a Senate (Seanad Eireann). As the Seanad is dealt with in the succeeding article in this Volume, the powers and duties of Parliament’s other two constituents, Dáil Eireann and the President of the State, will now be described.

Dáil Eireann.—Subject to constitutional disabilities or incapacities, every adult citizen, “without distinction of sex,” eligible for membership of Dáil Eireann is to be entitled to the Parliamentary franchise on the principle of “one man one vote,” and the ballot is secret.¹ The seat of Parliament is to be in or near Dublin, or in such other place as Parliament may from time to time determine.² Parliament has the sole and exclusive right to legislate.³ Power is given to create subordinate legislatures and provide for their powers and possessions;⁴ Parliament may also provide for the establishment or recognition of functional or vocational councils representing branches of the social and economic life of the people and define their rights, powers and duties in their relation to Parliament and Government.⁵

Parliament may not enact any law repugnant to the “Draft Constitution,” neither may it declare Acts infringements of the law which were not so at the date of their commission.⁶

The right to raise and maintain armed forces is vested exclusively in Parliament,⁷ which must hold at least one Session a year. Its sittings must be in public, except in cases of special emergency, when either House may hold a private sitting, with the assent of two-thirds of the Members present.⁸

Each House has the right to elect its own Chairman (the Speaker) and Deputy-Chairman and prescribe his powers, duties and remuneration. All questions in each House, except where otherwise provided in the “Draft Constitution,” are to be determined by a majority of the votes of the Members present, other than the Presiding Member, who may only exercise a casting vote in case of an equality of votes.⁹

Each House has power to make its own Rules and Standing Orders (under which the respective House quorums are laid

¹ Art 16 (1) (1-3).

⁴ *Ib.* (2).

⁷ *Ib.* (6).

² Art 15 (1) (3).

⁵ Art. 15 (3).

⁸ *Ib.* (7) (8).

³ *Ib.* (2) (1).

⁶ *Ib.* (4) (5).

⁹ *Ib.* (9) (11) (1) (2).

down), and to attach penalties for their infringement. Freedom of debate is ensured and official documents and the private papers of Members are to be protected. Each House may also protect itself and its Members against any person interfering with, molesting or attempting to corrupt its Members in the exercise of their duties,¹ and all official reports and publications of Parliament, or of either House thereof, and utterances made therein, wherever published are to be privileged.² Except in the case of treason, as defined in the "Draft Constitution," felony or breach of the peace, Members of each House are to be privileged from arrest in going to and returning therefrom, and while within the precincts of either House, and are not to be amenable, in respect of any utterance in either House, to any Court or authority other than the House itself.³

No Member may be, at the same time, a Member of both Houses; should he become a Member of the other House, his first seat automatically becomes vacant.⁴ Parliament is to make provision by law for the payment of Members and for the grant to them of free travelling facilities, etc.⁵

Dáil Éireann is to be composed of Members representing constituencies determined by law, whose number will be so fixed, but their total must not be less than one Member for every 30,000 population, or more than one for each 20,000. The ratio between the number of Members to be elected at any time for each constituency and its population, according to the last preceding census, so far as practicable, is to be the same throughout the country. Parliament is empowered to revise the constituencies, at least once every 12 years, having due regard to changes in the distribution of population. Such alterations, however, are not to take effect during the life of that Dáil Éireann sitting when such revision is made. Members are to be elected according to P.R., and no constituency is to have less than 3 Members.⁶

A general election for Dáil Éireann must take place not later than 30 days after its dissolution and all polling, so far as practicable, must be on the same day, Dáil Éireann having to meet within 30 days thereafter. The life of Dáil Éireann is to be 7 years from the date of its first meeting, but a shorter period may be fixed by law. Provision is also to be made by

¹ Art. 15 (10) (11) (3).

² *Ib.* (12).

³ *Ib.* (13).

⁴ *Ib.* (14).

⁵ *Ib.* (15).

⁶ Art. 16 (2). The summoning and dissolution of Dáil Éireann is dealt with under "President.

law for the Member who is Chairman immediately before a dissolution of Dáil Eireann to be deemed to be a Member thereof, without any actual election, at the ensuing general election. Elections for Dáil Eireann and the filling of casual vacancies are to be as provided by law.¹

Dáil Eireann is to be required to consider the Estimates for the financial year as soon as possible after their presentation, and legislation therefor must be passed within the year.² Dáil Eireann may not pass any vote or resolution, and no law may be enacted for appropriating revenue or other public moneys unless recommended to it by Government message signed by the Prime Minister.³

President.—We now come to the most interesting feature of the “Draft Constitution,” the powers and functions of the President of the State.⁴ Apart from the right of veto in regard to legislation, a prerogative which has not been exercised in the United Kingdom in recent times, the powers and functions of the Crown as Head of the State are limited to the summoning and proroguing of Parliament and its dissolution, all of which are usually done on the advice of its Ministers. Should the Crown act independently in regard to dissolution it accepts the responsibility. The Crown also offers counsel confidentially to the Prime Minister on any matter of policy, and the Prime Minister may consider such counsel or not as he deems fit. With the exception of certain acts such as free pardon and commutation of criminal sentences, both of which are done “in-Council,” the above are broadly the limits of the powers and functions of the Crown or its representative under full Parliamentary government. In the new State of “Éire,” however, the Crown is to have no representative internally, although it is to be recognized externally. The powers and functions vested in the office of the President of the State under the “Draft Constitution” are considerable. First, however, let some outline be given of the position the President occupies in the State.⁵ He is described as the “President of Éire” (*Uachtarán na hÉireann*) and is to take precedence over all other persons in the State. His appointment is to be by direct vote of the people, according to P.R., the electorate being the voters for Members of Dáil Eireann, and the ballot secret. He holds office for 7 years from the date of entering it, “unless before the expiration of that period he dies, resigns, becomes permanently incapacitated, or is removed from

¹ Art 16 (3) (2); (4) (5) (6) and (7).

² Art 17 (1).

³ *Ib.* (2)

⁴ Art. 12, 13, 15, 18, 22, 24 to 28, 30 to 35, 46, 51, 56, 61.

⁵ Art 12.

office"; he is eligible for re-election. A Presidential election is to be held on the sixtieth day before the date of the expiration of his term of office, and on such vacancy occurring, to the satisfaction of the Council of State, the election of the successor must take place. Every citizen of 35 years of age, not incapacitated therefor by law, is eligible for election as President, but every such candidate, not being a former or retiring President, who is eligible for re-election only once, must be nominated either by:

- (i) not less than 20 persons, each of whom is at the time a member of one of the Houses of Parliament; or
- (ii) by the Councils of not less than 4 administrative Counties (including County Boroughs) as defined by law.

No person and no such Council is to be entitled to subscribe to the nomination of more than one candidate at an election. Former or retiring Presidents, however, may nominate themselves, and when only one candidate is nominated, the ballot is dispensed with. A candidate for the Presidency may not be a Member of either House; if he is, his seat thereupon becomes vacant.

The President may not hold any other office of emolument and the first President assumes office, as soon as may be, after his election, and his successor, on the day following the expiration of office of his predecessor, or as soon as may be after the election. The President assumes office by taking and subscribing publicly, in the presence of Members of both Houses, the Judges of the Supreme and High Courts, and other public personages, the oath of office prescribed in the Constitution. The President may not leave Ireland during his term of office without the consent of the Government. Provision is made for his official residence in or near Dublin, and the emoluments and allowances attached to the office are to be determined by law, but may not be diminished during his term of office. Under Article 28, the Prime Minister is—"to keep the President generally informed on matters of domestic and international policy."

One of the most interesting features in connection with the powers of the President is the Council of State, which is a body apart from the Cabinet and Executive Government and Parliament, but yet advisory to the President in connection with several of his important powers and functions under the "Draft Constitution." The Council of State¹ is to be composed of:

¹ Art. 31, 32.

- (a) As *ex-officio* members, the Prime Minister, Deputy Prime Minister, Chief Justice, President of the High Court, the Chairman of Dáil Eireann and of the Seanad, and the Attorney-General;
- (b) every person able and willing to act as such member who has been President, Prime Minister, Chief Justice or President of the Executive Council of Saorstát Eireann (the Irish Free State).
- (c) Such other persons, not exceeding 7, as may be appointed by the President in his absolute discretion.

Such members are required to subscribe to a special oath, and those appointed by the President hold office until the appointment of their successors. A nominee of the President to this body resigns from office by placing his resignation in the hands of the President, who may, "for reasons which to him seem sufficient by an order under his hand and seal," terminate the appointment of any member of the Council appointed by him. Meetings of the Council are convened by the President, "at such times and places as he may determine." Article 32 provides that the President may not exercise or perform any of the powers or functions conferred upon him under the "Draft Constitution" after consultation with the Council, unless, and on every occasion before so doing, he has convened a meeting thereof and the members present thereat "shall have been heard by him."

The President, after consultation with this body, may:

- (a) At any time convene a meeting of either or both Houses of Parliament [Art. 13 (2) (3)].
- (b) With the approval of the Government, communicate with the Houses of Parliament by message or address on any matter of national or public importance [Art. 13 (7) (1)];
- (c) with the approval of the Government, address a message to the Nation at any time on any such matter [(Art. 13 (7) (2))];
- (d) decide or refuse the request of Seanad Eireann to appoint a Committee of Privileges in a difference of opinion between the two Houses as to whether a Bill certified under Art. 22 (2) is or is not a "Money Bill" [Art. 22 (2) (3)];
- (e) abridge the Seanad delaying period in connection with emergency legislation passed by Dáil Eireann under Article 24 [Art. 24 (1)];
- (f) refer any Bill under Article 26 to the Supreme Court

for decision as to whether it is repugnant to the Constitution [Art. 26 (1)]; or

- (g) decide whether a Bill of national importance on petition to him by specially reported vote of both Houses be, or be not, referred to the will of the people by Referendum or approved by the Dáil [Art. 27 (5)].
- (h) within three years of the first President entering upon his office, under Article 51 of the "Draft Constitution," after message to the Chairman of both Houses, refer any Bill for the amendment of such Constitution to Referendum by the people (Art. 51).

The President is not to be answerable to either House of Parliament for the exercise of the powers and functions of his office or for any act done or purporting to be done by him in the exercise and performance of such powers and functions, but provision is made for his behaviour to be brought under review by Parliament [Art. 13 (8)].

Article 13 (9) provides that:

The powers and functions conferred on the President by this Constitution shall be exercisable and performable by him only on the advice of the Government, save where it is provided by this Constitution that he shall act in his absolute discretion, or after consultation with or in relation to the Council of State, or on the advice or nomination of, or on receipt of any other communication from, any other person or body.

Article 13 (10) provides that, subject to the Constitution, additional powers and functions may be conferred on the President by law.

The President may terminate the appointment of:

- (a) The Attorney-General on the advice of the Prime Minister (Art. 30 (5)).
- (b) The Comptroller and Auditor-General or a Judge on resolutions of both Houses [Art. 33 (3) and (5)].
- (c) Any Minister, on advice of the Prime Minister [Art. 13 (1) (3)].

The President appoints:

- (a) The Judiciary [Art. 35 (1)] and determines the time within which a Judge shall make his declaration of Office (Art. 34).
- (b) The Comptroller and Auditor-General on nomination of Dáil Éireann [Art. 33 (2)].

- (c) The Attorney-General on the nomination of the Prime Minister [Art. 30 (2)].
- (d) The Prime Minister, on the nomination of Dáil Eireann [Art. 13 (1)] and the other Ministers on the nomination of the Prime Minister, and with the approval of Dáil Eireann [Art. 13 (1) (2)].
- (e) On the advice of the Prime Minister, the day of first meeting of Seanad Eireann after a general election [Art. 18 (8)].

The President summons and dissolves Parliament on the advice of the Prime Minister, but the President may in his absolute discretion refuse to dissolve Dáil Eireann on the advice of a Prime Minister who has ceased to retain the support of a majority in Dáil Eireann [Art. 13 (2)].

The President assents to and promulgates all laws in the *Gazette (Iris Oifigiúil)* [Art. 13 (3) (1) (2)] and the signed text is to be enrolled in the office of the Registrar of the Supreme Court, and is to be conclusive evidence as to the provisions of such law (Art. 25). The President, however, has not the power of veto upon legislation.

The President has supreme command, subject to regulation by law, of the defence forces, all officers whereof holding their commissions from him [Art. 13 (4) (5)]. He also has the right of pardon and commutation or remission of punishment imposed by any criminal court, but such power of commutation may, in exceptional cases, also be conferred by law on other authorities [Art. 13 (6)].

Under Article 14, a Commission is appointed to act in event of the absence, etc., of the President.

The President may be impeached¹ at the instance of either House, for stated misbehaviour, but the other House must investigate the charge, or cause it to be investigated. The President has the right to appear and be represented at the investigation of the charge, and if, as a result of such investigation, a Resolution is passed, supported by not less than two-thirds of the total membership of that House investigating, etc., the charge, declaring that the charge against him has been sustained, and that the misbehaviour the subject of the charge was such as to render him unfit to continue in office, such Resolution shall operate to remove him from office.

In the final consideration of this subject two observations present themselves to the constitutional student, in comparing

¹ Art. 12 (10).

the "Draft Constitution" with the Constitution now in force (Act No. 1 of 1922), upon which it would be interesting to have information:

- (1) The "Draft Constitution" does not seem to profess to operate as an amendment of the existing Constitution; and,
- (2) Was the Dáil Eireann, by which the "Draft Constitution" was "approved," "a Constituent Assembly" *vide* the Preamble to the existing Constitution?

AMENDMENTS OF THE CONSTITUTION OF THE IRISH
FREE STATE (SAORSTÁT EIREANN) ACT *
(No. 1 OF 1922)¹

| <i>Amendment No.²</i> | <i>Act No.</i> | <i>Constitution Article Affected</i> | <i>Subject.</i> |
|--------------------------------------|--------------------|--|--|
| 1 | 30 of 1925 | New 31A, 32A; Art 34 | Defining tenure of seat by Senator; time of Seanad elections periodical retirement of Senators. |
| 2 | 6 of 1927 | Art 21 | Re-election of Dáil Chairman at General Elections. |
| 3 | 4 of 1927 | Art. 28 | Cession of Public Holiday for General Election polling day. |
| 4 | 5 of 1927 | Art. 28 | Maximum duration of Dáil increased from 4 to 6 years. |
| 5 | 13 of 1927 | Art. 51 | Maximum increase of Executive Council from 7 to 12. |
| 6 | 13 of 1928 | Art. 14 and 32 | Abolition of I.F.S. as one electorate for Seanad; substituting indirect election therefor by Members of Dáil and Seanad voting together by P.R. |
| 7 | 30 of 1928 | Art 31, 32, and 34; New 32B | Reducing office tenure of certain class of Senators from 12 to 9 years; panel of Senators to be $\frac{1}{4}$ in place of $\frac{1}{2}$; alteration of tenure of seat by Senators retiring periodically and casual vacancies. |
| 8 | 27 of 1928 | Art. 31 | Senators' age qualification reduced from 35 to 30 years. |

¹ Also scheduled to the British Act entitled the Constitution of the Irish Free State (Saorstát Sireann) Act, 1922 (5th December, 1922), 13 Geo. V, c. 1. The *Articles* of the I.F.S. Constitution are contained in the Schedule to the Constitution Act.

² The title of these Acts is given as Constitution (Amendment, No. ...) Act, 19....

| | | | |
|----|------------|---|--|
| 9 | 28 of 1928 | New 33 | Alteration in regard to panel of candidates for election to Seanad (Panel Act No. 29 of 1928). |
| 10 | 8 of 1928 | Art. 14; deletion 47 and 48 | Abolition of Initiative and removal of Referendum in regard to suspended Bills. |
| 11 | 34 of 1929 | Art. 34 | Filling of casual vacancies in Seanad by Members of Dáil and Seanad. |
| 12 | 5 of 1930 | Art. 35 | Certification of "Money Bill" by Chairman of Dáil; reference to Committee of Privileges. |
| 13 | 14 of 1928 | Art. 38; New 38A | Abolition of 270 day suspensory period for Non-Money Dáil Bills and power of Seanad to request Joint Sitting Debate and substitution of the "stated period" (usually 18 months) and 60 day, or longer, suspensory period. |
| 14 | 8 of 1929 | Art. 39 | Seanad Bill rejected by Dáil may be introduced again in same Session. |
| 15 | 9 of 1929 | New 52 | Alteration in composition of Executive Council to allow inclusion of one Senator. |
| 16 | 10 of 1929 | Art 50 | Extending period, commencing with date of operation of Constitution, within which Constitution may be amended from 8 to 16 years. |
| 17 | 37 of 1931 | New 2A | Constituting Special Powers Tribunal to deal with public disorder. |
| 18 | 6 of 1933 | (Deletion sec. 2 of Constitution of I.F.S. (S.E.) Act, 1922); and deletion Art. 17 and amdt. Arts. 50 and 55 ² | Removal of Oath; deletion of words "within the terms of the Scheduled Treaty" from Art. 50 in connection with amendments of the Constitution by the I.F.S. Parliament, removal of Oath by Ministers not Executive Councillors. |

¹ Constitution (Removal of Oath) Act, 1933.

² The Constitution forms the First Schedule to the Constitution of the Irish Free State (Saorstát Éireann) Act, 1922, and the Treaty of 1921 forms the Second Schedule. Section 2 of such Act, which is purported to be deleted by the Constitution (Removal of Oath) Act, reads as follows:

2. The said Constitution shall be construed with reference to the Articles of Agreement for a Treaty between Great Britain and Ireland set forth in the Second Schedule hereto annexed (hereinafter referred to as "The Scheduled Treaty") which are hereby given the force of

| | | | |
|-----------------|------------|---|--|
| 20 ¹ | 40 of 1933 | Art 37 | Transferring from Crown to Executive Council the recommendations in regard to the appropriation of money |
| 21 | 41 of 1933 | Art 41 | Abolition of Crown's power to withhold assent to, or to reserve Bills |
| 22 | 45 of 1933 | Art 66 | Abolition of appeals to Privy Council |
| 23 | 17 of 1936 | Deletion 27 and Amndt 28 | Abolition of University representation |
| 24 | 18 of 1936 | Deletion 30, 31, 31A, 32, 32A, 32B, 34, 38, 38A, 39, and 82, Art 12, 16, 20, 21, 24, 25, 35, 52, 57, 63, and 68 | Abolition of the Seanad. |
| 26 ² | 12 of 1935 | Art 3 | Extra-territoriality to I F S citizenship |
| 27 | 57 of 1936 | Deletion 60, Art 2A, 12, 24, 41, 42, 51, 53, 55, and 58 | Removal of certain executive functions vested in the Crown |

law, and if any provision of the said Constitution or of any amendment thereof or of any law made thereunder is in any respect repugnant to any of the provisions of the Scheduled Treaty, it shall, to the extent only of such repugnancy, be absolutely void and inoperative and the Parliament and the Executive Council of the Irish Free State (Saorstát Éireann) shall respectively pass such further legislation and do all such other things as may be necessary to implement the Scheduled Treaty

¹ The Constitution (Amendment No 19) Bill, which reduced the Seanad "stated period" in regard to the delay of Bills from 18 to 3 months, was initiated in the Dáil and sent to the Seanad on 28th June, 1933. On the 11th July following, the Seanad on the Second Reading carried the following amendment

The deletion of all words after the first word "That," in the question for Second Reading, and the substitution of the following words

the Second Stage of Constitution (Amendment No 19) Bill, 1933, be postponed pending the consideration by and the report of a Joint Committee of both Houses of Oireachtas on the changes, if any, necessary in the constitution and powers of the Seanad (XVII, I.F.S. *Sen Deb* 5 110)

The Dáil took no notice of this request and the 18 months period expired 27th December, 1934. On 11th April, 1935, the Bill was again sent to the Seanad and rejected by it, 1st May, 1935. The 60 days period expired 10th June, 1935. The Bill, however, never became law, the Government failing to introduce the necessary enacting Resolution in the Dáil, presumably because of the impending abolition of the Seanad under Constitution (Amendment No 24) Act (No 18 of 1936)

² The Constitution (Amendment No 25) Bill, to restore the Referendum for amendments to the Constitution, was initiated in the Seanad, passed by it, and sent to the Dáil 6th June, 1934, but no date for its Second Reading in that House was ever fixed. In the ordinary way, the Bill would have become dead after the following dissolution, but the Seanad was abolished by Constitution (Amendment No. 24) Act, abovementioned.

X. BI-CAMERALISM IN THE IRISH FREE STATE

BY THE EDITOR

THE young life of the Second Chamber in the Irish Free State has been fraught with difficulties and subjected to many changes, culminating on May 29, 1936, in the abolition of the Senate, but succeeded by the appointment, on the 9th of the month following, of a Commission to investigate the question of a Second House and in 1937 by the provision for the bicameral system in the new "Draft Constitution". The terms of reference of the Commission were:

to consider and make recommendations as to what should be the functions and powers of the Second Chamber of the Legislature in the event of its being decided to make provision in the Constitution for such Second Chamber and further, to consider and make recommendations as to how in that event such Chamber should be constituted as regards number of members, their qualifications, method of selection and period of office, and what allowances (if any) should be made to such members.¹

Seanad Eireann under Constitution of 1922.

Article 12 of the above Constitution² provided for a Parliament consisting of the King,³ and two Houses, a Lower House,⁴ or Dáil Eireann, directly elected upon an adult franchise on the P R system,⁵ and an Upper House, or Seanad Eireann.

Article 30 of such Constitution provided that.

Seanad Eireann shall be composed of citizens who shall be proposed on the grounds that they have done honour to the Nation by reason of useful public service or that, because of special qualifications or attainments, they represent important aspects of the Nation's life

The first Seanad Eireann numbered 60, 30 nominated and 30 elected, and the minimum age of Senators was 35 years. Article 82(b) of the Constitution provided for the appointment of the 30 nominated Senators by the President of the Executive Council who, in making such nominations, was required to

¹ Report of the Second House of the Oireachtas Commission, 1936, PN No 2475 (hereinafter referred to as the "Report"), p 4

² Irish Act No 1 of 1922

³ The words "the King and" were deleted by Constitution (Amendment No 27) Act (No 57 of 1936)

⁴ Of 153 Members, including 3 each for the two Universities.

⁵ "P R" as here used means Proportional Representation with the single transferable vote.

have special regard for the representation of groups or parties not then adequately represented in Dáil Éireann. Of these 30, 15 had to be selected by lot, for the full period of 12 years, but the remaining 15 only for 6 years.

With regard to the nominated Senators, Dáil Éireann passed the following Resolution on 25th October, 1922

That it is expedient that the President of the Executive Council, in nominating the nominated members of the Senate, should, with a view to the providing of representation for groups of all parties not adequately represented in the Chamber, consult with representative persons and bodies, including the following. Chamber of Commerce, the Royal College of Physicians of Ireland, the Royal College of Surgeons in Ireland, the Benchers of the Honourable Society of King's Inns, Dublin, the Incorporated Law Society of Ireland, Councils of the County Boroughs of the Irish Free State.¹

Amongst the first nominations of Senators were 1 Marquess, 5 Earls, 1 Countess, 1 Baron, 4 Baronets,² 2 Knights and 2 Privy Councillors

The other 30 Senators were originally elected by the members of Dáil Éireann by P.R. Of these, the first 15 were elected to hold office for 9 years and the remainder for 3 years. A Second Chamber was thus contemplated with $\frac{1}{4}$ its membership renewable every 3 years. Casual vacancies were to be filled by co-option of the Senate itself, such Members only to hold their seats for the then current triennial period. These periods commenced on December 6, 1922.

Vacancies arising at the end of each triennial period were to be filled by an electorate consisting of all citizens of the Irish Free State (as one constituency) duly qualified, who had reached the age of 30 years, by P.R. on a Panel composed of three times as many qualified persons as there were Members to be elected, of whom $\frac{2}{3}$ were to be nominated by Dáil Éireann and $\frac{1}{3}$ by Seanad Éireann, plus such former Senators as desired to be included in the Panel. At this election held on September 17, 1925, which was the only one under this system, there were 76 candidates for 19 seats (15 plus 4 casual vacancies), and the general opinion was that the system was unsatisfactory,³ and its progress and

¹ *Free State Parliamentary Companion*, 1932. Ed. by W. J. Flynn (the Talbot Press, Ltd., Dublin, and Cork), p. 89. In the preface to the 1932 edition, the Editor expresses himself as under a special obligation to Mr. Donal O'Sullivan, B.L., Clerk of the Seanad, for preparing and arranging the section of the book dealing with the Constitution, etc.

² One of whom was also a Privy Councillor.

³ *I.F.S.P. Companion*, 1932, p. 90.

result were considered to have proved the impracticability of the electoral system introduced by the Constitution. Only one quarter of the electorate had participated in the voting, a fact attributed in part to the technical complication of the transferable vote system when applied to a lengthy list of preferences, in part to the treatment of the whole country as a single constituency, which precluded any personal contact between candidates and voters. A Joint Committee of both Houses was set up, which recommended the abolition of the system. Its proposals resulted in a comprehensive amendment of Articles 31, 32 and 33 of the Constitution,¹ all passed in 1928,² by which $\frac{1}{3}$ of the Senators were to retire every 3 years and their successors to hold office for 9 years. Some provisions were of a transitory character, such as the tenure of seat of Senators elected in 1928 and 1931, in order that, after the 1931 election, there would be 20 Senators holding their seats for 3, 20 for 6, and 20 for 9 years, the whole Chamber thus being renewable in 9-year periods. The minimum age for Senators was reduced to 30 years and the system of election was to be by Members of Dáil and Seanad Éireann sitting together, according to P R, Senators being chosen from a Panel composed pursuant to the provisions of the Seanad Electoral Act of 1928,³ which enacts that as many qualified persons as there are Members to be elected shall be nominated by Seanad and Dáil Éireann respectively, casual vacancies being filled by such bodies voting together. The effect of the amendment was to divest the Senate of the element of popular authority which it might have claimed under the previous system.⁴

In neither of the two elections held under this system has a full Panel of twice the number of candidates been formed, as appears to be the intention of the Act.⁵ In 1928 there were 19 vacancies but only 27 candidates, Dáil and Seanad Éireann each formed a Panel of 19 names, but the Seanad Panel duplicated 11 names in the Dáil Panel. In 1931, there were 23 vacancies, and the Seanad nominated the 23 outgoing Senators as the Seanad portion of the Panel. The Dáil portion of the Panel comprised only 16 names, and of these, 11 were already on the Seanad Panel.

¹ Namely, Constitution (Amendment Nos. 8, 13, 14, 27, 28, 30) Acts.

² *The Constitution of the Irish Free State*, by Leo Kohn, 1932. (Allen and Unwin.)

³ Act No. 29 of 1928.

⁴ *The Constitution of the Irish Free State*, by Leo Kohn, 1932. (Allen and Unwin.)

⁵ Irish Act No. 29 of 1928, sec. 5.

Except in regard to Money Bills, the Seanad had co-ordinate powers of legislation with the Dáil as to the initiation of legislation. In regard to "Money Bills" as defined in Article 35 of the Constitution, Dáil Éireann had exclusive legislative authority. The certification of "Money Bills" rested with the Speaker of Dáil Éireann, but a method was provided by which his decision could be challenged,¹ by reference to a Committee of Privileges. Seanad Éireann was not allowed to amend this class of Bill, but could make recommendations² in regard to such a Bill to the other House, subject to its acceptance.

In regard to non-Money Bills, Seanad Éireann had full power of amendment.

In case of continued disagreement between the two Houses on a Dáil Bill, amended or otherwise by the Seanad, it was originally provided by the Constitution³ that the Bill should, not later than 270 days after it had first been sent to Seanad Éireann, or after such longer period as might be agreed upon between the two Houses, be deemed to be passed by both Houses in the form the Bill had left Dáil Éireann. This period was, however, later amended⁴ by Constitution (Amendment No. 13) Act,⁵ which provides for a maximum delay period of one year and 8 months. Such period, however, might be reduced by a dissolution of Parliament.

Formerly Seanad Éireann could demand a Referendum on any Bill which had been passed by both Houses, on fulfilment of the conditions laid down in Article 47 of the Constitution, but this power was never exercised and the Article was deleted by Constitution (Amendment No. 10) Act.⁶

Originally no Senator could be a Minister, but Article 52 of the Constitution was amended by Constitution (Amendment No. 15) Act,⁷ by which one Senator could be appointed to the Executive Council. No such appointment, however, was made until 1932.⁸

Under Section 7 (1) of the Ministers and Secretaries Act, 1924,⁹ Members of either House, not exceeding 7, could be appointed Parliamentary Secretaries to the Executive Council.

¹ *I F S P Companion*, 1932, p. 91.

² See also *JOURNAL*, Vols. I, 81-90 and II, 18, for this practice elsewhere.

³ Art. 38.

⁴ Art. 38A.

⁵ Act No. 14 of 1928.

⁶ Act No. 8 of 1928, for Referendum in regard to amendment of the Constitution see *Referendum*.

⁷ Act No. 9 of 1929.

⁸ Senator J. Connolly as Minister of Posts and Telegraphs.

⁹ Act No. 16 of 1924.

or to Executive Ministers, but no Senator has been so appointed.¹

In 1934 a Constitution (Amendment No 25) Bill was initiated in and passed by the Seanad, proposing so to amend the Constitution as to provide for the submission to a Referendum of the people of amendments made thereto by way of ordinary legislation within the (extended) period of 16 years from the date of the coming into operation thereof, this sought to re-establish the original position with regard to constitutional amendments. The Bill, however, was ignored by Dáil Eireann and lapsed with the abolition of the Seanad.

Eventually, in 1936, this gradual reduction of the powers of Seanad Eireann ended in its abolition by Constitution (Amendment No 24) Act,² and the establishment of a unicameral Legislature. This Bill was passed by the Dáil and sent to the Seanad on May 25, 1934, where it was rejected on the first of the following month, whereupon Dáil Eireann, under Constitution (Amendment No 13) Act (No 14 of 1928), after expiration of the suspensory period on November 24, 1935, by Resolution, adopted May 28, 1936, such Bill became law.

The Constitution also provided that no person could be a Member both of Seanad and Dáil Eireann at the same time, and that if a Member of one House was chosen for the other, his first seat became *ipso facto* vacant,³ that each House had power to make its own Rules and Standing Orders, with power to attach penalties for their infringement, and that there should be freedom of speech, that official documents and the private papers of Members be protected as well as the persons of its Members against interference, molestation or attempt to corrupt its Members in the exercise of their duties,⁴ for the election of its Chairman, etc ;⁵ that Parliament shall hold at least one session a year, and as to its summoning, etc , special provision being made that the Sessions of the Seanad shall not be concluded without its own consent,⁶ that the sittings of each House shall be public, but that in cases of special emergency, either House may hold a private sitting with the assent of $\frac{2}{3}$ of the Members present,⁷ and for casual vacancies in the

¹ *IFSP Companion*, 1932, p 92

² Constitution (Amendment No 24) Act (No 18 of 1936); see also an interesting brochure, *Pro Domo Sua*, containing the speeches of Senator T. W. Westropp Bennett, Chairman of Seanad Eireann, and of the Vice-Chairman, Senator M. F. O'Hanlon, in defence of the Second Chamber system (Talbot Press, Dublin), 1934

³ Art 16

⁵ Art 21 as amended by Act No 6 of 1927

⁶ Art 24.

⁴ Art. 20.

⁷ Art 25.

Seanad.¹ A Resolution also of the Seanad was required for the removal of the Comptroller and the Auditor-General or the Judges²

With this brief sketch of the pre-abolition conditions in regard to the Second Chamber in the Irish Free State, attention will now be directed to the provisions of the inquiry into the setting up of a new Second Chamber.

The Commission's Report.

The Commission appointed on June 9, 1936, the terms of reference of which have already been given, consisted of 23 persons, with the Chief Justice as Chairman and the Attorney-General as Vice-Chairman, and included 7 Members of Dáil Éireann, 5 professors and other selected persons, including three Civil Servants

The letter of the Chairman addressed to the President of the Executive Council, covering the Report of this Commission and other documents, was dated September 30, 1936. The Commission held 27 sittings. The result of the Commission's investigations are embodied in the recommendations of the Majority Report, with 5 reservations, and 3 Minority Reports, with reservation by 2 Members to the Second Minority Report. It is proposed in this article to take the course laid out by the Majority Report, and to deal with the recommendations of the Minority Reports and reservations to both types of report, under the respective subjects, as they come up for treatment.

It was ruled early in the proceedings, as a matter of interpretation of the terms of reference, that the Commission was not to consider whether a Second House should be established or not³. The Commission, therefore, proceeded on the basis that the constitution of Dáil Éireann and its constitutional position should continue substantially as they were, subject only to such changes as may be entailed by the establishment of a Second House⁴.

Functions of the Second House—This subject is also dealt with later under the various types of Bills, but, broadly speaking, the Majority Report recommended that the Second House should have:

(a) the consideration of all proposed legislation,⁵

(b) a suspensory veto, but not an absolute veto upon Dáil Bills,⁶

¹ Art 34 as amended by Acts No 30 of 1925, 30 of 1928, and 34 of 1929

² Arts 63 and 68

³ Report, p 6, § 4

⁴ *Ib*, § 5

⁵ Report, p 7, § 6 (iii), also supported by First Minority Report, p 25,

§ 29

⁶ *Ib* (iii) (iv) (v) and (vi), also supported by First Minority Report, p. 25, § 29

- (c) the right of initiation (also to the Government) of non-Money Bills,¹
- (d) the treatment of Consolidation Bills,² and
- (e) the examination of Statutory Rules and Orders³

In the First Minority Report, described in the official publication as "Additional Report from the Chairman," the Chief Justice expressed the following opinions, in regard to what should be the functions of the body he would like to see created

- (f) if a Second House be set up at all, its *raison d'être* must depend upon its authority to command a hearing with respect from the Dáil and the people, while I see it as a body primarily having advice and criticism to offer, the Dáil continuing to be the primary predominant and effective legislative member of the Oireachtas⁴
- (g) As the existence of a third constituent of the Oireachtas must spring from the volition of the Dáil and therefore be a body designed to co-operate with the Dáil, to help in its work of legislation and to accept tasks delegated to it by the Dáil Its establishment would be further inspired by the motive of reassuring minorities in the population as to regard for justice and equal dealing in legislation and other matters⁵
- (h) The Second House, to be called the "Council of Ireland," be an integral part of the Oireachtas, but with functions quite different from the other two constituents of that body.⁶
- (i) that the main purpose of such Council should be, to help on the work of the Legislature and (so far as may be necessary) to protect the people from the consequences of panicky, over-hasty, ill-considered or misunderstood legislation. While the body might have one or two debates in the Session, if the occasion arose, on some matter of real public importance, the work of the Council would usually be rather of "Committee character," and that after a Bill has been brought up to just before the passing stage, it should be sent to the Council for advice, the Council reporting thereon in writing to the Dáil, both in regard to the principle of the Bill and any suggested amendments Should the Council then report that the principle of the Bill should not be made law, the Council is to report in writing to the Dáil its reasons for such advice Such Reports (including minority reports) to be public documents, but it would be in the sole power and responsibility of the Dáil to disregard such advice or to go on with the Bill and make it law⁷ (Certain reservations were made as to constitutional amendments which will be dealt with under "Referendum")

¹ *Ib.*, p. 7, §§ 7 and 8, also suggested in the Second Minority Report, p. 28, § 6 (f)

² *Ib.*, § 8

³ Or by a Special Joint Committee, *Ib.*, § 9

⁴ Report, p. 18, § 5, also supported by Mr. Geoghegan, *ib.*, p. 15, § 2.

⁵ *Ib.*, pp. 18-19, § 6. ⁶ *Ib.*, § 8. ⁷ *Ib.*, pp. 21-22, § 18.

- (j) Should, on the other hand, the Council not report against the Bill in principle, but point out the amendments suggested, stating the reasons for each, then the Council's suggestions would be dealt with by the Dáil in the same manner as objections to the principle of a Bill ¹
- (k) The Council not to be given the power of initiation of legislation, except in the nature of prompting or inspiring such in a proposed Dáil Bill, to be transmitted to the Dáil with a Report thereon ²
- (l) That the Council by its Committee investigate and report upon consolidation measures, transmitting such to the Dáil, with a certificate that it contains no new legislation, nor any amendment of an existing Act and advising that such measure be passed into law. The Dáil, in such cases, to be able, if it deems necessary, to submit such draft measure to the Attorney-General for examination and certificate in accord with that of the Council, whereupon the Bill would proceed as a non-controversial measure to the Statute Book ³

It was also suggested in the First Minority Report that the Second Chamber "suspensory period" of Bills be 3 months after the receipt of the Dáil Bill by the Second Chamber, at the expiration of which period such Chamber should be assumed to have reported that it had no advice to offer on the subject-matter ⁴

In the Second Minority Report, signed by 8⁵ of the 23 Members of the Commission, it was considered that:

- (m) Reviewing powers of legislation by the Second House was a secondary consideration and not in itself sufficient to justify the creation of a Second House, which powers could be just as efficiently discharged by Committees of experts appointed and remunerated by the Dáil ⁶
- (n) In a democracy like the Irish Free State, the primary function of a Second Chamber was to safeguard fundamental human rights, as well as the continued existence and peaceful development of democratic institutions, against encroachments by the Executive and the majority in the Dáil, and that while realizing that at present there is no reason to apprehend any serious encroachments, yet the example of many other countries leads one to envisage the possible emergence in the Irish Free State also of movements and parties which would use the forms of democracy for the purpose of destroying democracy itself. Therefore if a Second Chamber were to be established it should be regarded as the defence of popular liberties against any such dangers as its primary function ⁷

¹ Report, p 22, § 19.

² *Ib.*, pp. 23-24, § 23

³ *Ib.*, p 23, § 22

⁴ *Ib.* p 23, § 21

⁵ Ex-Senator Sir John Keane, Bart, Professor Daniel A. Binchy, M A, Ph D, B L, Eamon Lynch, Frank MacDermot, T D John Moynihan, Professor Alfred O'Rahilly, M A, Ph D, B Sc, Professor Michael Tierney, M A., and Ex-Senator Richard Wilson

⁶ Report, p 26, § 2

⁷ *Ib.*, § 3

- (o) it was not in favour of a suspensory veto on Bills, but that the secondary powers of the Second House should be strictly limited to the work of improving Dáil legislation¹

Duration of Second House —The Majority Report recommended² that the Second House be reconstituted after each general election (for the Dáil), namely, every 4 years.³

In the First Minority Report (§ 12) 6 years was suggested for the "Council of Ireland"

The Second Minority Report recommended (§ 21) that the nominated element should retain their seats until the first meeting of the Dáil after a general election therefor, next following the date of such Senator's nomination, and that the elected element of the Seanad sit for 5 years and be elected and retire as a body

System of Selection —The Majority Report stated⁴ that there was substantial agreement among the members of the Commission that the number of Members of the Second House should be 45, the Membership of the Dáil being then 153. The greatest diversity of opinion, however, prevailed among the Members of the Commission as to the method of selection of Members of the Second House, but there was only one exception to the inclusion of nomination as a method for obtaining part of the 45. A proposal which commended itself to some Members was, that a proportion of the Second House should be selected on the basis of vocations or occupations, but such Members did not reach a scheme which satisfied a majority of the Commission.⁵ Such selection, however, was not contemplated with the object of making the Second House representative of such vocations, etc., but rather with the object of forming a Panel of persons who had attained positions of responsibility and distinction in their own particular sphere who would be competent to deal with all the business of the House, whatever it might be, so as to afford a wide choice; also in order that the selection might not be made on a political party basis

Mr. Seamus Moore, T D, a co-signatory to the Majority Report, made a reservation thereto;⁶ namely, that in the composition of the Second House very liberal use should be made of the wide knowledge and experience of persons engaged in the task of Local Government, who have served for 3 years or upwards as Chairmen of County Councils,

¹ *Ib*, p 27, § 5.

² *Ib*, p 11, § 26.

³ Reduced by Constitution (Amendment No 4) Act (No 5 of 1927) from 6 to 4 years

⁴ Report, p 9, § 17

⁵ *Ib*, p 11, § 27.

⁶ *Ib*, p 17

Boards of Health or Municipal Corporations and who should be entitled automatically to membership of any Panel to be formed for election to the Second House, particularly persons who have continued to give their time and abilities to public affairs without personal recompense or reward, as in the case of the Chairmen abovementioned, and likely to exhibit the independence of mind and other qualities desired in members of a Second House

In the First Minority Report it was suggested that the Council of Ireland should consist of 40 members, in order to afford 8 members each for 5 committees, specially selected for possession of special character and ability fitting them for the discharge of the onerous and responsible tasks entrusted to them¹ A type of person experienced in affairs, rather than "educated," with general knowledge of the business of life, "not the scholar, but the man who reads the newspapers, knows and understands broadly what is going on around him," and "who has a responsive mind"²

The Second Minority Report rejected any form of popular election, but favoured selection on a functional basis, as a method to provide a division of type and a variety of expert knowledge³ which it was generally agreed should characterize a Second Chamber, and would minimize party conflicts and secure the services of persons who normally would remain out of public life, although exceptionally fitted for the task of criticizing and improving particular types of legislation.⁴ The signatory of the First Minority Report, however, was strongly opposed to a vocational or occupational basis for the composition of the Second House⁵

The signatory to the Third Minority Report agreed with the principle of Functional representation for the Second House, not in terms of ownership only, but as participants in a real wealth-creating service, and that whenever truly representative functional organizations become general they should be availed of for the formation of a House of Legislature, with the operative and administrative staffs as dominant factors, as distinct from the owners as owners⁶

Qualification for Membership.—It was recommended in the Majority Report that the Second House should be composed of persons chosen on account of their ability, character, experience and knowledge of public affairs,⁷ also that some of

¹ Report, p 19, § 9

⁴ *Ib*, § 12

⁶ *Ib*, p 36

² *Ib*, § 10

⁵ *Ib*, p 18, §§ 3 and 4

⁷ *Ib*, p 9, § 18

³ *Ib*, p 30, § 11

the Members should be women,¹ and that the minimum age be 35 years.²

In the First Minority Report it was suggested that the qualifying age for Members of the Second House should be not less than 35 and not more than 70 years, at the time of becoming a Member.³

Composition of Second House—The Majority Report summarized the main proposals for the composition of the Second House—other than those embodied in their Report—as follow:

- (i) That the Members of the Second House should be elected by a direct vote of the people,
- (ii) That the Second House should be, in part, nominated, and, in part, elected—the election to be held in constituencies based on provinces,
- (iii) That it should be, in part, nominated, and, in part, constituted by dividing the elected First House—a certain number of members at each General Election being elected to Dáil Éireann in excess of those required to constitute that body,
- (iv) That it should be, in part, nominated, and, in part, elected by a system of vocational election,
- (v) That it should be, in part, nominated, and, in part, elected by Dáil Éireann from a Panel of persons actively concerned in certain specified public interests or services—the nominating authority to the Panel to be (among other suggestions) a Committee of Dáil Éireann,
- (vi) That it should be obtained, in part, by election by Dáil Éireann from a Panel prepared by a nominating authority having regard to the qualifications specified in paragraph 22⁴ and, in part, by uncontrolled nomination, the nominating authority in both cases being the President of the Executive Council,
- (vii) That it should be obtained, in part, by controlled nomination, and, in part, by uncontrolled nomination, the nominating authority in both cases being the President of the Executive Council.⁵

The Majority Report, however, recommended that $\frac{1}{3}$ of the Second House be nominated by the President of the Executive Council⁶ and the remainder selected from a Panel who then are, or have been, actively concerned in public interests or services to be specified, the Panel being prepared for each election,⁷ and the selection made by a nominating authority or committee of persons (not necessarily members of the Dáil) elected by

¹ *Ib.*, p. 9, § 18.

² *Ib.*, § 19, this age was also recommended in the Second Minority Report, p. 29, § 10.

³ *Ib.*, p. 19, § 10.

⁴ Namely, persons who are or have been actively concerned in public interests or services to be specified, the Panel being prepared for each election.

⁵ Report, pp. 9-10, § 20 (i-vii).

⁶ *Ib.*, § 21.

⁷ *Ib.*, § 22.

the Dáil for that purpose, by P.R., such authority being required by its terms of reference, to nominate for the Panel not fewer than twice the number of persons to be elected, having regard in each case to the qualifications set forth in paragraph 22¹ and as far as practicable, to the representation of the public interests and services indicated in paragraph 25.² Any 2 members³ of the nominating authority were to be entitled to make 6 nominations to the Panel, such authority to consist of 7, of whom one would be Chairman.⁴

The Majority Report was of opinion that the elected element of the Second House should be so elected by an Electoral College, consisting of every person who had been a candidate at the immediately preceding general election for the Dáil. Election to the Second House was to be conducted in accordance with a scheme whereby each such elector is entitled to one vote for every 1,000 first preferences he received as candidate for election to the Dáil, a fraction of 1,000 exceeding 500, to be reckoned as 1,000, the election to be by P.R., by postal ballot, and the whole country to be one constituency.⁵ Mr John Hearne, B.A., LL.B., B.L., one of the signatories to the Majority Report, however, made a reservation to the opinion expressed by his co-signatories, namely, that while being in agreement with the other members of the Commission in rejecting a proposal that the Second House should be elected by direct vote of the people, he suggested⁶ that the only practicable method was election of the elected element in the Second House by the Dáil, according to P.R.

The signatory to the First Minority Report was of opinion that the Panel idea was wholly impractical and that the exclusion of all popular election for the Second House would deprive it of all authority or claim to respect from the people. This signatory was also against the vocational or occupational basis of representation.⁷ In his proposed "Council of Ireland," to which reference has already been made, the signatory suggested that one-half (20) of such Council be elected and the other half nominated,⁸ and that the former element be so

¹ See footnote 4 on previous page

² Namely, National Language and Culture, the Arts, Agriculture (in all its forms) and Fisheries, Industry and Commerce, Finance, Health and Social Welfare, Foreign Affairs, Education, Law, Labour, Public Administration (including Town and Country Planning)

³ Dissented from by Mr Connolly, Report, p. 14.

⁴ Report, pp. 10-11, § 23

⁵ *Ib.*, p. 11, § 24.

⁶ *Ib.*, p. 16

⁷ *Ib.*, p. 18, §§ 2, 3 and 4, popular election was also supported by Mr. Geoghegan. *Ib.*, p. 15, § 2

⁸ *Ib.*, p. 19, § 11.

elected by 4 constituencies, 5 by each Province of the Saorstát, according to P R, the electors not to be less than 30 years of age and the suffrage to be universal, voting to be compulsory, enforced by penalties and loss of privileges (*i.e.*, income tax deductions for children and the like), with tenure of seat for 6 years. The Provincial basis, it was calculated, would "avoid local, Dublin, or Cork, or other cliques," and get a broader basis of opinion.¹ In regard to the nominated half of the "Council of Ireland," he suggested appointment by a body consisting of:

- The Speaker (Ceann Comhairle) of the Dáil;
- The then President of the Executive Council;
- The Leader of the Opposition, and of every party of not less than 5 Members, and a representative chosen by the independent Members of the Dáil.²

It was further suggested by such signatory that the choice of the nominating committee be limited by the age restriction, already referred to in his Minority Report, and that if a further limitation was desired, such choice be confined to those belonging to any of the following classes, or extension to other responsible groups, but not with the purpose of representation of any such classes

- (i) Ex-Ministers of State 7 years in office.
- (ii) Retired Judges and (First Class) Civil Servants.
- (iii) 10 years' practice in one of the learned professions, medicine, law, engineering, architecture, or
- (iv) Mayors or Chairmen of Town or County Councils for 2 years or members of such bodies for 5 years;
- (v) University Professors of History, economics, philosophy or law,
- (vi) Ex-Presidents of Chambers of Commerce
- (vii) Ex-Presidents or Secretaries of Trade Unions, etc., or organizations of farmers.³

He also suggested that the tenure of seat be for 6 years, the nominated Members to vacate their seats simultaneously with the elected Members, with fresh nomination after each election.⁴

The Second Minority Report suggested a Second House of 50 members, of whom 10 were to be nominated by the President of the Executive Council, and 40 elected by the Dáil from Panels, both elements to be chosen in the manner stated below.⁵ The signatories to this Report remarked⁶ that if all or any of the "Functional and Vocational Councils representing branches of the social and economic life of the nation" had already been

¹ *Ib.*, pp. 19-20, § 12, also supported by Mr. Geoghegan, p. 15, § 2.

² *Ib.*, p. 20, § 13.

⁴ *Ib.*, p. 20, § 15.

⁵ *Ib.*, p. 29, § 9.

³ *Ib.*, § 14.
⁶ § 13.

established by the Oireachtas, as envisaged in Article 45 of the Constitution, they would favour direct election to the Second House by such Councils, and in event of such establishment in the future they recommended such method of election be adopted. In the present circumstances, however, they recommended that, where substantially representative vocational organizations existed, they be given a direct voice in the selection of candidates for membership of the Second House according to the system of Panels hereinafter detailed.¹ The Second Minority Report therefore suggested that the elected members (40) of the Second House be elected by the Dáil from Panels formed before each General Election to the Second House, constituted largely by vocational organizations of a substantially representative character. Under this scheme, the representation of unorganized or insufficiently organized vocational groups would be secured by a system of controlled nomination to the Panels, which were to be 4 in number,

namely

- (i) Farming and Fisheries,
- (ii) Labour,
- (iii) Industry and Commerce, and
- (iv) Education and the learned Professions

each such Panel to consist of 20 persons and to be presented to the Dáil, 10 Members being elected from each Panel.²

The following were the detailed recommendations in regard to the formation of the 4 Panels.

- (a) *Farming and Fisheries*—Twelve elected by the General Council of County Councils, 2 by the Irish Agricultural Organization Society, 4 nominated by the Minister of Agriculture, after consultation with appropriate organizations, and 2 actively engaged in the Fishing Industry. All the persons except the last 2 to derive their livelihood wholly or mainly from Farming.
- (b) *Labour*—Fourteen elected by the Irish Trades Union Congress, and 6 nominated by the Minister of Industry and Commerce after consultation with his Colleague for Agriculture, as workers wholly or for the greater part unorganized.
- (c) *Industry and Commerce*—Six elected by the Federation of Saorstát Industries, 2 by the National Agricultural and Industrial Development Association, 3 by the Association of Chambers of Commerce of the Irish Free State, 1 by the Standing Committee of Irish Banks, 1 by Cumann na n-Innealthóirí,³ 1 by the Institute of Civil Engineers of Ireland, 1 by the Institute of Chartered Accountants in Ireland; 1 by the Royal Institute of the Architects of Ireland,

¹ Report, p. 30, § 13

² *Ib.*, pp. 30-31, § 14

³ i.e., 'The Engineers' Society (or Club).—[Ed.]

and, the remaining 4 to be nominated by the Minister for Industry and Commerce as persons actively engaged in transport or in branches of industry, commerce, finance and the professions associated therewith, which, in his opinion, are not otherwise adequately represented on the Panel

- (d) *Education and the Learned Professions* —One, elected by the Academic Council of each of the 3 Constituent Colleges of the National University of Ireland, 2 by the Board of Trinity College, Dublin, 4 by the Irish National Teachers Organization, 1 by the Secondary Teachers Association of Ireland; 2 each by the Bar of Saorstát Eireann and Incorporated Law Society, 3 by the registered medical practitioners resident in Saorstát, and 3 (1 of whom to be actively associated with Vocational Education) nominated by the Minister for Education after consultation with other organizations representing teachers and managers of schools¹

The signatories to this Report recommended that the Members of the Second House to be chosen by the Dáil, be elected at a separate election for each Panel, by P R,² and that such elected Members hold their seats for 5 years and be elected and retire in a body³. In connection with the proposed machinery for selection of the Second House, however, only the broad principles were to be embodied in the Constitution, leaving the details to be fixed by ordinary legislation, which should deal with the election to the Panels by organizations (other than the General Council of County Councils, the Academic Councils of the Constituent Colleges of the National University of Ireland and the Board of Trinity College), and merely name each organization, designating an official thereof as Returning Officer, and duly notifying the Clerk of the Dáil with the result of the election. Only citizens of Saorstát Eireann were to have the right of voting at election to Panels. It was suggested that the Dáil appoint a Credentials Committee to examine the lists on each Panel, and hear and decide any objections,⁴ and also that the number of Ministerial nominations be limited by the Constitution to a maximum of 6 for each Panel, with the hope that such nominations would progressively diminish with the further development of vocational organizations and that ultimately the Constitution would provide for direct election by Functional Councils, as already referred to.⁵

In addition to the 40 elected Members of the Second House the signatories to the Second Minority Report suggested that 10 be nominated by the President of the Executive Council, as detailed below, so as to include men and women to represent

¹ Report, pp. 31-32, § 16

² *Ib.*, p. 34, § 21.

⁴ *Ib.*, p. 33, § 18.

⁵ *Ib.*, p. 33, § 17

⁶ *Ib.*, § 19.

aspects of the national life and public services for which it would be difficult to provide suitable representation on the Panels¹ In regard to the nominated element (10) it was suggested that

- (a) 3 be persons prominently associated with the movement for National Language and Culture,
- (b) 4 have special knowledge or experience of public administration, economics or foreign affairs,
- (c) 2 with special experience in public health and social services, and
- (d) 1 be prominently associated with Literature and the Fine Arts.

It was suggested that the nominated element should hold their seats until the first assembly of the Dáil after the General Election thereto next following the date of their nomination²

The 2 signatories to the Third Minority Report concurred in the Second Minority Report, with the following reservations. They regarded as very objectionable, the election to the Second Chamber by the Dáil, even from narrowly restricted vocational Panels, because it gave a degree of dependence on the Dáil injurious to the prestige of the Second House, and on account of the political canvassing and pledging it would entail. In substitution, they suggested either

- (a) that each vocational group directly elect 10 persons to the Second House, or,
- (b) that the selection from Panels should be by lot

They considered that the laws of chance were more likely to do justice than a politically coloured election by the Dáil.

In regard to the 10 nominated Senators, they preferred the nominating authority to be the Head of the State, if one was created under the new Constitution, rather than the President of the Executive Council. They also felt that the categories to which the nominating authority was restricted should be enlarged as time goes on, and should not be regarded as final and exhaustive.³

In the Third Minority Report, Mr Thomas Johnson dissented upon the Second Minority Report in regard to representation of functional organizations by which statutory privileges were conferred upon specified organizations, respecting the nomination of Senators, on account of several of the organizations named being of a voluntary nature, with no assured permanence. This signatory concurred in the Second Minority Report in regard to paragraphs 14-16 and 20-22

¹ Report, p. 31, § 15

³ *Ib.*, p. 35, §§ 1 and 2

² *Ib.*, pp. 33-34, §§ 20, 21.

(*i.e.*, the system of election and nomination and tenure of seat) if applied only to the first election; provided a new schedule defining the organizations entitled to make nominations was devised for each subsequent election in the light of circumstances then existing¹

Non-Money Bills—The Majority Report recommended that no Bill initiated in the Dáil should become law until it had been sent to the Second House for consideration,² but that such House should not have the power to impose a veto on any Dáil Bill³. It was recommended, however, that the Second House should have the power to return to the Dáil any Dáil Bill with amendments (if any) within 3 months from the date when it had been first sent to the Second House, subject to the extension of such term by agreement with the Dáil, and subject to provision for special matters,⁴ but that the refusal of the Second House to pass a non-Money Bill or the passing of such a Bill with amendments which the Dáil did not accept, should not have the effect of delaying such Bill longer than 3 months after the date on which it was first sent to the Second House; provided that in computing the term of 3 months any Recess of the Dáil of one month or upwards be excluded⁵.

The Majority Report also recommended⁶ that the Second House should have the right to initiate non-Money Bills, and that such right should also be vested in the Government, on the motion of a Minister, it being indicated that this power could be usefully exercised for the purpose of initiating consolidation measures, a form of legislation of which, the Commission remarked, there was urgent need⁷.

The procedure in regard to the treatment of Bills under the "Council of Ireland" system, suggested in the First Minority Report, has already been dealt with under "Functions of the Second House".

The Second Minority Report suggested that all non-Money Bills (excluding emergency legislation and Private Bills) passed by the Dáil be submitted to the Second House before enactment⁸ and that such House have power to amend, at its discretion, and to pass, or refuse to pass, Bills⁹. In the case of non-Referendum Bills not passed by the Second Chamber,

¹ *Ib.*, pp 36-37.

² *Ib.*, p 7, § 6 (iii), also supported by First Minority Report, p 25, § 29.

³ *Ib.*, § 6 (iv), also supported by First Minority Report, p 25, § 29.

⁴ *Ib.*, § 6 (v), also supported by First Minority Report, p 25, § 29.

⁵ *Ib.*, p 7, § 6 (vi), also supported by First Minority Report, p 25, § 29.

⁶ *Ib.*, § 7. ⁷ *Ib.*, § 8. ⁸ *Ib.*, p 27, § 6 (a). ⁹ *Ib.*, p 27, § 6 (b).

or passed with amendments which the Dáil did not accept, the Second Minority Report suggested that the Dáil have power, at the expiration of 90 days from the date on which the Bill was first sent to the Second Chamber, to order, by Resolution, that the Bill be deemed to have been passed by both Houses in the form in which it was so sent¹

Money Bills.—The Majority Report recommended² the following definition of "Money Bill" as originally defined in Article 35 of the Constitution.

A Bill only providing for

- (i) the imposition, repeal, remission, alteration or regulation of taxation,
- (ii) the imposition for the payment of debt or other financial purposes of charges on public moneys or the variation or repeal of any such charges,
- (iii) supply, the appropriation, receipt, custody, issue or audit of accounts of public money,
- (iv) the raising or guarantee of any loan or the repayment thereof,
- (v) subordinate matters incidental to any of the subjects referred to in (i)-(iv) hereof, except that "taxation," "public money," and "loan" shall not include such raised by local authorities or bodies for local purposes³

The Majority Report recommended that the Second House should not have power to reject a "Money Bill," nor to amend it so as directly to impose or increase any charge on State Funds,⁴ but that such House should be able to make recommendations⁵ for acceptance or rejection by the Dáil, within 21 days after such Bill has been sent to the Second House by the Dáil⁶

The First Minority Report concurred in this recommendation as to time,⁴ but stated that as the powers of the "Council of Ireland" were to be only advisory, "Money Bills" should be treated in the same way as other proposed legislation, and that such Council might, if called upon to do so, for instance, on some big question of administration, advise confidentially in private session by written report to the Dáil, without such advice being binding either upon the Government or the Dáil.⁷

The Second Minority Report suggested that the functions and powers of the Second House in relation to "Money Bills" should be those exercised by the Seanad before its abolition (*vide* Article 35 of the Constitution).⁸

¹ Report, p. 28, § 6 (e), and § 5

² *Ib*, p. 8, § 11

³ See also Constitution Art 35

⁴ *Ib*, p. 8, § 11

⁵ *Id*, the "Process of Suggestion"; see JOURNAL, Vols I, 81-90 and II, 18.

⁶ Report, p. 8, § 12

⁷ *Ib*, p. 24, §§ 25, 26

⁸ *Ib*, p. 28, § 7.

Emergency Legislation.—The Majority Report recommended that, in cases in which the President of the Executive Council, on the introduction of a Bill, certified by Message to both Houses that the Bill, the subject of such Message, was urgent and immediately necessary for the preservation of the public peace or safety, or was rendered necessary by the existence of a national emergency, whether internal or international, the time for consideration by the Second House should, by Dáil Resolution, be abridged to such period as the said Resolution might determine, provided that a Bill so certified, as enacted (if the Second House so required), should contain a clause limiting the duration of the Bill, when enacted, to a period of 4 months, and provided further that such consideration time should not be abridged to less than 7 days dating from the day such Bill was sent by the Dáil to the Second House.¹

The Second Minority Report suggested that in the case of any non-Money Bill in regard to which the President of the Executive Council, in a signed Message to the Second Chamber, sent with the approval of a majority of the Members of the Dáil, declared that in his opinion delay in enactment would put in serious jeopardy the internal peace and order of the State, its security from or defence against external attack or its financial stability

- (a) the Second Chamber have power to recommend amendments, to pass without amendment or to recommend the withdrawal of the Bill,
- (b) should the Dáil not accept such recommendations, the Dáil have power, after 21 days from the date on which the Bill was first sent to the Second House, by Resolution to declare the Bill passed by both Houses in the form in which it was first so sent,
- (c) in the event of the Dáil adopting such Resolution, the Second House to have power, within 40 days thereafter, by Resolution adopted by a majority of its members, to submit the Bill to Referendum, as hereinafter described.²

Private Bills—This subject was only referred to in the First and Second Minority Reports. In the First, it was stated that under the type of body suggested in place of the Seanad, Private Bill legislation would not present any special problem, as such legislation would be reported upon as in the case of any other Bill,³ and in the Second it was suggested that the functions and powers of the Second House in relation to Private Bills, be those exercised by the Seanad before its abolition.⁴

¹ *Ib.*, p. 9, § 16, also supported by First Minority Report, p. 25, § 29.

² *Ib.*, pp. 28-29, § 8

³ *Ib.*, p. 24, § 24

⁴ *Ib.*, p. 28, § 7.

Referendum —In the Act¹ which abolished "the initiative," the Referendum was cut out of the Constitution except in regard to the amendment of the latter. Article 50 of the Constitution provided that amendments thereto might be made by ordinary legislation within 8 years of it coming into operation, but that any amendment after the expiration of such period could only be effected by Referendum. This period was by Constitution (Amendment No 16) Act (No 10 of 1929) altered to 16 years, which meant that the period within which constitutional amendments could be made by ordinary legislation would expire on December 5, 1938.

The Majority Report recommended that so long as there was no operative provision in the Constitution for a Referendum, it should be provided that the Second House have the right by a majority of its total number of Members to call for a Referendum on any legislation involving an amendment of the Constitution and that the Dáil should be bound by such Referendum.² The Report also stated that some members of the Commission were of the opinion that the Second House should have the right to call for the submission of other major matters of legislation to the people by Referendum for decision in case of irreconcilable conflict between the two Houses.³

In the Memorandum⁴ to the Majority Report, Mr James Geoghegan, S C, T D, expressed himself as against any Referendum unless demanded by at least $\frac{2}{3}$ of the Members of the Second House.

A Reservation⁵ to the Majority Report was made by Mr Joseph Connolly, to the effect that if provision was made for a Referendum, it should be by specific Article in the Constitution, and that if the Second House was to have the right to call for a Referendum, such call should require a majority vote of $\frac{2}{3}$ the total number of Members of such House.

In the First Minority Report it was suggested, in regard to the advisory body, the "Council of Ireland," purposed to be set up in place of the Seanad, that, should the reason for the "advice" be that the Bill proposed to amend the Constitution and that the people had not given a clear mandate for such amendment, the Council be given the right to insist that the Bill be not passed into law until it had been submitted to the people by Referendum for decision, such to be final and

¹ Constitution (Amendment No 10) Act (No 8 of 1928).

² Report, p 8, § 13, also supported by First Minority Report, *ib*, p 25,

§ 29

³ *Ib*, p. 8, § 14.

⁴ *Ib*, p 15

⁵ *Ib*, p 14.

binding, the Bill then automatically to be considered as passed or rejected, according to such decision ¹

In the exercise of the functions of the Second House, as already outlined, the Second Minority Report suggested² that in case of a Dáil Bill, the Second House should have power, within a period of 40 days from the date in which such Bill was first sent to it, to demand by resolution of a majority of the entire House, that the principle of the Bill be submitted to Referendum, on the ground that its passage into law would raise an issue of vital national importance upon which the electorate had not yet given a clear decision, and that if such demand be made, it be mandatory on the Executive Council either to withdraw the Bill or to provide for the holding of a Referendum within 50 days of the date on which the demand was made by the Second House. It was further suggested that a Bill rejected by the majority of voters at a Referendum be not further proceeded with ³

Casual Vacancies.—The Second Minority Report suggested that vacancies among nominated Senators be filled by the appointment, by the President of the Executive Council, of a person belonging to the same category, and that such vacancies among the elected Members of the Second House be filled by the Dáil from among the remaining members of the Panel from which such Member had been elected, or, in event of no person being available from that Panel, by the election by the Dáil at its discretion, of a person drawn from the vocational group to which such person belonged, and that a person chosen, either for a nominated or an elected vacancy, hold his seat only for the unexpired term of the Member whose place he filled ⁴

In a Reservation to this Minority Report, 2 signatories thereto suggested that casual vacancies be filled by co-option.⁵

The signatory to the Third Minority Report concurred in the suggestion made by the Second Minority Report, but only in regard to the first election and nomination to the Second House.⁶

Language ⁷—The Majority Report in Paragraph 18⁸ expressed the opinion that a proportion of the persons nominated to the Second House, and of those nominated for election, should have a competent knowledge of the National Language

¹ *Ib*, p. 22, § 18

² *Ib*, pp 26-27, § 4.

³ *Ib*, pp 27-28, § 6 (c) and (d)

⁴ *Ib*, p 34, § 22, this is also advocated in the First Minority Report, pp 20-21, § 15

⁵ *Ib*, p. 35, § 1

⁶ *Ib*, p 37.

⁷ See also JOURNAL, Vol. IV, pp. 109-110

⁸ Report, p. 9.

The 9 undermentioned members of the Commission, however, in a Reservation¹ to such paragraph, were of opinion that it was due to the dignity of the National Language that effective provisions should be made at the outset to ensure and maintain the gradual predominance of Irish as the language of the Second House. Mrs. Helena Concannon, M.A., D.Litt., T.D., Joseph Connolly, George Gavan Duffy, S.C., James Geoghegan, S.C., T.D., John J. Hearne, B.A., LL.B., B.L., Dr. R. P. Farnan, Séamus Moore, T.D., Professor W. Maginness, M.A., and the Hon. Aodh Ua Cinneidigh, C.J. (Chairman of the Commission).

The signatory to the First Minority Report suggested² that it should be a special charge of the nomination committee to see that persons with a real and competent knowledge of the National Language form as large a proportion as possible of the personnel of the "Council of Ireland"—the advisory body, suggested in that Report, in place of a Second House.

*Ministers' Rights in Both Houses*³—The Majority Report recommended that every Minister should have the right to attend and be heard in the Second House⁴. This recommendation was concurred in by the signatory to the First Minority Report⁵.

Chairman—The Majority Report recommended that the Second House have power to elect its own Chairman. This recommendation was concurred in by the signatory to the First Minority Report⁶.

Privileges—The Majority Report recommended that the Members of the Second House should have the same immunities and privileges as are conferred by the Constitution on Members of the Dáil Éireann⁷.

Standing Orders—The Majority Report recommended that the Second House have power to regulate and control all its own business and for that purpose to make any Standing Orders it might consider necessary or desirable⁸.

*Payment of Members*⁹—It was recommended in the Majority Report that membership of the Second House should carry with it the same allowances as those applicable to Members of the Dáil.¹⁰ This recommendation was concurred in by the signatory to the First Minority Report,¹¹ and in the Second Minority Report¹².

¹ Report, p. 13

³ See also JOURNAL, Vol. I, pp. 76-79

⁵ *Ib.*, p. 25, § 29

⁷ *Ib.*, p. 7, § 6 (ii)

⁹ See also JOURNAL, Vols. I, 101-106, II, 17, IV, 39

¹⁰ Report, p. 12, § 28

² *Ib.*, p. 21, § 16

⁴ Report, p. 8, § 15

⁶ *Ib.*, p. 6, § 6 (i) and *ib.*, p. 25, § 29

⁸ *Ib.*, § 6 (i)

¹¹ *Ib.*, p. 25, § 29

¹² *Ib.*, p. 34, § 23

Judges—The Majority Report recorded its view that a Resolution for the removal of a Judge, or for the removal of the Comptroller and Auditor-General, for stated misbehaviour or incapacity, should, in addition to being passed by the Dáil, be passed also by the Second House, before it could become effective.¹ This view was also concurred in by the signatories to the Second Minority Report, but without the qualification.²

The signatory to the First Minority Report suggested that every proposed appointment to the office of the High Court and the Supreme Court be submitted for the approval of the "Council of Ireland," as in the case of the United States Senate in regard to the bench of the Supreme Court,³ and that any question of the removal of a Judge or the Comptroller and Auditor-General of the Irish Free State, for stated misbehaviour or incapacity, should require a Resolution of the "Council of Ireland," as well as of the Dáil, before becoming effective.⁴

Secret Societies—The signatory to the First Minority Report suggested that, in order that there should be no foundation for suspicion that the members of the "Council of Ireland" were amenable to any outside control, every member thereof should be required, before he took his seat, to make a solemn affirmation that he was not, and so long as he may continue a member of the Council, would not become, a member of any secret or oath-bound society or association.⁵

Delegated Legislation.—The signatory to the First Minority Report, referring to the growing practice of delegation to Ministers of making Statutory Rules and Orders for giving effect to Acts of Parliament, and to the feeling that Parliamentary control of such Rules and Orders was becoming more and more necessary, suggested that every such Rule, etc., be sent to the "Council of Ireland," which should be required to report to the Dáil within a limited time (say 3 months) stating whether the "Council of Ireland" approved of such Rules, etc., or not. If such Report were favourable, then the Rule or Order, it was suggested, should come into force at once, but, if not, the reason for so reporting was to be stated in writing in the Report, whereupon such Rule, etc., would not come into force unless and until the Dáil itself had pronounced in its favour by Resolution to that effect.⁶

This concludes the review of the Report of the Second House Commission. A close consideration of this inter-

¹ *Ib*, p. 7, § 10

⁴ *Ib*, § 28

² *Ib*, p. 28, § 6 (*h*)

⁵ *Ib*, p. 21, § 17

³ *Ib*, p. 24, § 27.

⁶ *Ib*, pp. 22-30, § 20

esting document will afford much explanation of the provisions which are to be made in that respect in the new "Draft Constitution" for Ireland, which document will now be considered with special regard to the position of the new Second House thereunder, the other provisions of the "Draft Constitution" having been dealt with in the previous Article (IX) in this Volume

Seanad Éireann under "Draft Constitution" of 1937.

Selection.—The Second House under the "Draft Constitution," which retains the name "Seanad Éireann," is to be composed of 60 Members, 11 nominated and 49 elected¹ Anyone eligible for election to the Dáil will be eligible for membership of the Seanad. The nominated Senators are to be appointed by the *Taoiseach*, or Prime Minister, subject to their prior consent, and casual vacancies are to be filled in the same manner.²

The 49 other Senators are to be elected as follows.

- (i) 3, by the National University of Ireland;
- (ii) 3, by the University of Dublin, and
- (iii) 43, by the electorate given below upon a system of Panels.

The system of election is to be P R with secret postal ballot,³ and the University Senators are to be elected on a franchise and in the manner to be provided by law.

Before each general election of such Members five Panels of candidates are to be formed containing respectively the names of persons having practical knowledge and experience of the following interests and services

- (i) National language and culture, literature, art, education, and such professional interests as may be defined by law for the purpose of the Panel,
- (ii) Agriculture and allied interests and fisheries;
- (iii) Labour, organized or unorganized;
- (iv) Industry and Commerce (including banking, finance, accountancy, engineering and architecture), and
- (v) Public administration and social services, including voluntary social activities,⁴

Not more than 11, and, subject to the provisions of Article 19, not less than 5 Members of Seanad Éireann may be elected

¹ Art. 18 (1)

³ Art. 18 (5)

² Art. 18 (10) (2).

⁴ Art. 18 (7) (1)

from any one Panel,¹ and the number of Senators to be so elected and the method of their nomination to such Panels is to be determined by law, the Bill for which, at the time of going to press, has not been published. A general election for the Senate must take place not later than 90 days after a dissolution of the Dáil, which is elected for 7 years from the date of its first meeting, though a shorter period may be fixed by law.² The first meeting of the Seanad after a general election is fixed by the President of the State on the advice of the Prime Minister. The tenure of the seat of a Senator continues until the day before the polling day for a Seanad general election.³ Subject to the above, these elections are to be regulated by law. Article 19, however, provides for the direct election by any functional or vocational group or association or council of so many Members of Seanad Éireann as may be fixed by such law in substitution for an equal number of the Members to be elected from the corresponding Panels of candidates constituted under Article 18. Casual vacancies amongst the elected element are to be as laid down by law.⁴

Legislative Power—Except as to "Money Bills," the Seanad is to have co-ordinate legislative powers with the Dáil, subject to the reservations given hereunder.

"Money Bills,"⁵ which may only be initiated in the Dáil, must be sent to the Seanad for its recommendations, but such a Bill must be returned to the Dáil, not longer than 21 days after it has been sent to the Senate, when the Dáil may either accept or reject all or any of such recommendations. Should such a Bill not be so returned within such period, or is returned within that period with recommendations which the Dáil does not accept, it shall be deemed at the expiration of that period to have been passed by both Houses.⁶ The same definition is provided of a Money Bill, as already defined in regard to section 35 of the existing Constitution.⁷

It is provided that all "Money Bills" shall be so certified by the Chairman of the Dáil, and the Seanad may, by resolution at a sitting at which not less than 30 Senators are present, request the President of the State to refer the question, whether the Bill is, or is not a Money Bill, to a Committee of Privileges. Should the President, after consultation with the Council of State,⁸ decide to accede to the request, he appoints such a Committee consisting of an equal number of Members of

¹ Art 18 (7) (2)

⁴ Art 18 (10) (3)

⁷ Act No 1 of 1922

² Art 18 (8)

⁵ Arts 21, 22

⁸ See previous Article (IX) in this Volume

³ Art 18 (9).

⁶ Art 21

both Houses, with a Judge of the Supreme Court as Chairman, who shall only have a vote in case of an equality of votes. The question is referred to such Committee by the President, which must report to him within 21 days after the Bill was sent to the Seanad, and the decision of the Committee is to be final. Should the President, after such consultation, not accede to the request of the Seanad or should the Committee fail to report within such time, the certificate of the Chairman of the Dáil is to stand confirmed.¹

In regard to non-Money Bills, a Seanad Bill if amended by the Dáil is to be considered as a Bill initiated in the latter House.² A time limit is also imposed upon the Seanad in regard to a non-Money Bill or a Bill, the time for the consideration of which by the Seanad has been abridged under Article 24, for whenever any such Dáil Bill is either rejected by the Seanad or passed by it with amendments to which the Dáil does not agree, or is neither passed (with or without amendment) nor rejected by the Seanad within the "stated period,"³ such Bill shall, if the Dáil so resolves within 180 days after the expiration of the "stated period," be deemed to have been passed by both Houses on the day in which such Resolution is passed. The above provisions also apply to a Seanad Bill amended by the Dáil, in which case the "stated period" begins on the day when the Seanad Bill as amended by the Dáil is first sent to the Seanad.⁴

If and whenever in regard to any Bill, on being passed by the Dáil, other than a Bill to amend the Constitution, the Prime Minister certifies by written messages addressed to the President of the State, and to the Chairman of each House, that in the opinion of the Government the Bill is urgent and immediately necessary for the preservation of the public peace and security, or by reason of the existence of a public emergency, whether domestic or international, the time for the consideration of such a Bill by the Seanad (if the Dáil so resolves, and if the President, after consultation with the Council of State, concurs) shall be abridged to such period as specified in the Resolution. Should the Seanad then fail to pass a Bill, the time for the Seanad's consideration of which has been abridged under Article 24, within the specified period, or pass it with amendments, or recommendations, to which the Dáil does not

¹ Art 22

² Art 20 (2)

³ *i.e.*, 90 days, beginning on the day the Bill is first sent by the Dáil to the Seanad or any longer period agreed upon in respect of the Bill, by both Houses. Art 23 (1) (2). See also (2) (2)

⁴ Art 23 (2)

agree, the Bill is to be considered as having passed both Houses. But the Act for such a Bill shall only remain in force for 90 days from the date of its enactment, unless before the expiration of that period both Houses have agreed that the Act shall remain in force for a longer period, to be duly specified in their Resolutions¹

Conclusion.

As will be seen from the previous Article (IX) in this Volume, the "Draft Constitution" was duly approved of at a Referendum of the voters for Dáil Éireann and is (*vide* Article 62 thereof) to come into force on the day following the expiration of a period of 180 days after its approval (on July 1, 1937) by the people. At the time of going to press, the Seanad implementing Bill had not been published.

The re-constitution of the Second House in the Irish Free State presents many features of interest to the Parliamentary and constitutional student, but it is not the policy of this Society to express in its JOURNAL, opinion upon any particular subject in its application to any particular country. In regard to the Report of the Irish Free State Commission on the Second House of the Oireachtas, however (and the same has been observed in connection with another important Commission's Report dealt with in this issue),² the writer would like to remark that it is a pity it has not been indexed. Perhaps he may be pardoned for speaking thus feelingly, it having fallen to his lot to dissect the 37 solid pages of the Report in order to display their interesting contents to readers of this JOURNAL. The Reports of these two Commissions contain too much matter of value and importance not only to the constitutional student and Parliamentaryman, but to the public generally, to be hidden away in the maze of an unindexed official document.

¹ Art 24

² *id.*, S W Africa Commission

XI. PARLIAMENTARY LIBRARY ADMINISTRATION

BY THE EDITOR

It was suggested that the *Questionnaire* for Volume III of the JOURNAL should call for particulars from the various Parliaments in regard to their Library Rules, with remarks as to their working. The information thus obtained, now given in this Article, had, however, unfortunately to be held over until the publication of this Volume, owing to lack of space in the two previous issues.

There may be some repetition in the recitation of the various types of Library Rule, but as such Rules are not usually published in the Standing Orders book, it was thought better, wherever possible, to leave the particular Rule intact, in order that it might be more readily available for adaptation by any other Library of Parliament, to which it might be found to apply. Where Rules differ from those of other Parliament Libraries in the same Dominion, they are shown in full.

Considerable space has been allotted to this subject, for although it is not directly connected with the proceedings of Parliament or with constitutional law in its relation to the working of the Parliamentary machine, yet the Library of Parliament is an important factor in the exercise by Parliament of its legislative and general functions. A good Statesmen's Reference collection, kept judiciously up to date, is, as it were, the coal which makes the fire burn more brightly. The Library, therefore, is one of the departments of Parliament which the legislator should care for and foster in every way, the while himself firmly supporting the enforcement of the rules for its better administration.

Westminster.—There is no Joint Library of the two Houses of the Imperial Parliament, as in the Dominions, for the House of Lords and the House of Commons each has its own library under its own management and control.

House of Lords.—In response to the request for information in regard to the Library of the House of Lords, Mr. Charles T. Clay, the Librarian, courteously informs us that there is nothing in the form of any codified set of rules for the administration of this Library. It is primarily for the use of Members of the House of Lords, and for their legislative and judicial work. The only rules which can be quoted are those which have been drawn up for the admission of visitors to view the Houses of Parliament.¹

¹ Sir Bryan Fell's *Guide to the Houses of Parliament*

House of Commons.—In response to the request for information in regard to the Library of the House of Commons, Mr Austin Smyth, C B E, the Librarian, courteously informs us that they have no printed rules, but that the lines on which the Library is run were laid down in the Reports¹ (long since out of print) of the old Library Committees, which finally petered out, leaving the Library entirely in the hands of the Speaker, whom they had been appointed to assist. Decisions, however, have been given from time to time in answer to complaints, and these have been handed down and acted upon by successive Librarians, but there has been no formal body of Rules. Mr Smyth has also kindly supplied a copy of some notes he wrote recently and which have been reprinted from the Proceedings of the Twelfth Conference of the Association of Special Libraries and Information Bureaux, 1935 (more familiarly known as the "ASLIB"), entitled *Libraries and Sources of Information in Government Departments*. This Reprint also includes notes on the Libraries of the Foreign, India, Home, Dominions and Colonial Offices, Air and Health Ministries, Boards of Trade and Education, Imperial Institute, General Register Office—Somerset House, Forestry Commission, Registry of Friendly Societies, Post Office Savings Bank, the Accountant-General's Department and Engineering Research Station of the G P O, the Meteorological Office and the Research Department at Woolwich. The Librarians of these Departmental Libraries are associated in what is called the "Circle of State Librarians," which consists of 42 Government Librarians and meets three times a year. The notes abovementioned were presented to the Conference by Sir Stephen Gaselee, K C M.G., C B E., Librarian of the Foreign Office, and well deserve examination by the Librarians of the Oversea Parliaments. However, it is proposed only in this article to give, from such Reprint, the notes of the Librarian of the House of Commons, which are as follows²

The House of Commons Library dates from the year 1818, when a Librarian was first appointed to look after the Acts of Parliament, Journals and Records, Sessional Printed Reports and

¹ Those of which we have note in our Society's records are here given, in case copies are filed in the records of any of the Dominion Parliaments, the Commons numbers in brackets being those of the Reports and the other numbers against them, the respective years —(496), (515), (516), 1825, (496), 1830, (600), 1831-2, (463), (480), 1834, (104), 1835; (63), 1836, (468), 1837, (691), 1837-38, (406), 1839, (422), 1841, (610), 1845, and (453), 1852.

² pp 3, 4 and 5 of the Reprint

Papers, which had accumulated in quantity under the charge of the Clerk of the Journals, and to make them more readily accessible for the use of Select Committees

For the better disposition of these volumes a new Library was erected in 1827, and so convenient were the new arrangements found to be that in the following year the sum of £2,000 was voted for the purchase of books. The catalogue of 1830 shows that this sum was expended on a variety of works of History, Antiquities, Topography, Commerce, Political Economy and Law, together with Books of Reference, Dictionaries and Maps.

By the fire of 1834 the old Palace of Westminster, including the Library, was burnt down. A great proportion of the books was saved by being thrown out into the street, but a valuable collection of Tracts relating to English History was destroyed. The unprinted papers of the House, which had remained in the keeping of the Clerk of the Journals, were all destroyed, with the consequence that the House of Commons had no collection of archives similar to those which have been published by the House of Lords, on the model set by the Historical Manuscripts Commission. The manuscript volumes from which the Journals had been printed were, however, saved and are kept in the present Library.

In the new Houses of Parliament the Library, while obtaining more ample accommodation, continued to preserve the same general character as before, consisting of two main divisions, (1) Parliamentary and Official Publications, and (2) Works of more general interest, such as might assist Members of Parliament in the discharge of their duties.

(1) The former class dates back to the year 1731, but it is only from about the beginning of last century that entire sets of the Parliamentary Papers and Reports of each year have been preserved. From 1801 to the present time this collection of official information is complete and has been carefully indexed. The Accounts and Papers of each Session, together with the Parliamentary Debates, Acts of Parliament, Colonial and Dominion Acts and Debates and Reports and Papers, and some analogous documents received in exchange from foreign legislatures, form a regular increment to the contents of the Library, amounting to many volumes in a year.

(2) As regards the more general part of the Library, while the country gentleman was the prevailing type of Member of Parliament the original design expanded into something between a good London club library and a good country house library, including the Greek and Latin Classics, Poetry and *Belles-Lettres* in English and other modern languages, and works on Fine Art, Architecture and Natural History. Professed fiction, controversial divinity, natural science, and mental and moral philosophy have, speaking generally, always been excluded, as have all works of a highly partisan character on other subjects. In later years the multiplication of published books and the diminution of vacant space have enforced on the library, as on most similar institutions, the necessity of specializing in books connected with the work of the organ of government to which it is attached, and of trusting for information on other subjects

to extensive works of reference. The desire of Members of Parliament to adorn their speeches with quotations affords a welcome excuse for adding to the Library such works as may be considered to have taken rank as literature of the finer sort.

The choice of books to be added to the Library rests with the Librarian, subject to the approval of the Speaker, to whom the House has committed the management of its Library. Lately the Speaker has appointed a small unofficial committee of members to assist him with their advice, and in practice the Librarian submits a list of suggested books to this committee and receives suggestions from it. The additions made each year, other than those which are automatic, are chiefly in the departments of History, Biography, Political Memoirs, Political Economy, Statistics and Law, but standard works in other departments are added also. The leading English reviews and magazines are taken in, and one or two foreign ones. Newspapers are not taken in by the Library (except *The Times*, which is bound and preserved), but are to be found in the Members' Reading Room, in another part of the House.

An author catalogue, with a separate index of subjects, is employed. It was last reprinted in 1910, and annual supplements have been printed since, but neither they nor the catalogue have been published. A card catalogue also exists for the purpose of checking the volumes on the shelves.

A sum of £1,200 a year is allowed for books, binding and stationery, but furniture and salaries of staff are not included in it.

The staff of the Library consists of The Librarian, the Assistant Librarian, two clerks and two messengers.

The appointment of these officers rests with the Speaker. The full staff is usually present till about 7 p.m., after which one half remains on one night, and the other half remains on the next night, till the close of the sitting of the House.

The use of the Library is confined to Members and Officers of the House of Commons, but admission is extended by courtesy to Peers, who reciprocate the courtesy in regard to the House of Lords Library, and Members of Dominion Parliaments are admitted during hours when the House of Commons is not sitting. Members of the general public are admitted when accompanied by a Member of the House, unless the House is sitting, but the use of the Library for the purposes of study by the outside public requires special permission from the Speaker, who will usually accord it if he is satisfied that the required documents or books cannot be found elsewhere.

Canadian Dominion Parliament.

In this and the other Oversea Parliaments there is a Joint Library for the two Houses. In the Library of the Dominion Parliament at Ottawa there are two Joint Librarians, one English, Mr. Martin Burrell, the Parliamentary Librarian, and the other French, Mr. Félix Desrochers, the General Librarian, and we are indebted to the courtesy of Mr. Burrell for the information here given.

The Library of Parliament is not a National Library in the usual sense of the word. At the time of the Union, in 1841, the libraries of the Parliaments of Upper and Lower Canada were merged into one, consisting of some 6,000 volumes. In 1849 the collection had swollen to about 25,000 volumes. In that year the Parliament Buildings of the then Canada, in Montreal, were burned down and only some 200 books were saved. Five years later, when the Library had grown to 17,000 volumes, came the second disastrous fire (in Quebec), but this time 8,000 volumes were saved. At the time of Confederation, 1867, the Library contained about 55,000 volumes, and it then became the Library of Parliament of the Dominion of Canada. It was not until 1876 that the present building was ready for occupation, and by that time roughly 100,000 books were moved into the new structure. That number has since increased to approximately 400,000 volumes.

The Library is the only part of the Parliament Buildings which was not destroyed in the disastrous fire on February 3, 1916. Seen from the outside the building, with its flying buttresses, is a noble architectural design. The interior is circular in form, in diameter about 100 ft., the height from the floor to the top of the cupola rather more than 130 ft. The beautiful floor, of oak, cherry, and walnut, though damaged by the rush of water under the closed doors during the fire, remains much as it was in 1876.

The Members of the permanent staff—17 in number—are appointed by the Civil Service Commission, which body also concerns itself with promotions and with the salaries of the staff. Temporary employees, of whom there are now 8, are appointed on the recommendation of the two Speakers. It might here be noted that as the debates in Parliament are carried on in both French and English, and as about one-third of the volumes in the Library are in the French language, it is necessary that the staff should consist of both English-speaking and French-speaking members. There are two Librarians, one English, one French, called Joint Librarians, who are appointed by the Government. The general conduct of the institution is under the jurisdiction of Parliament itself, acting through a Joint Committee of both Houses, and presided over by the Speakers of the Senate and the House of Commons, and the Librarians have the rank of Deputy-Ministers.¹

Year after year, the old Rules, given below, which were

¹ i.e., Heads of Departments

formulated in the very early days of the Dominion, have been printed. It may frankly be said that in later times some of them have been more honoured in the breach than in the observance, and almost necessarily so. For instance, it is not now customary to prevent anyone coming into the Library during the Session, or to require the written permission of the Speakers before they can be admitted. Being a Parliamentary Library, however, its privileges are not extended indiscriminately to those who are not connected with Parliament. Students are permitted to study in the Library itself, and a limited number of people are permitted to borrow books, though this is discouraged during the Session. Reference books cannot be taken from the Library, even by Members, and this also applies to all bound volumes of newspapers, of which there are some ten thousand.

The following are the Rules

- (a) A proper Catalogue of the Books belonging to the Library shall be kept by the Librarians in whom the custody and responsibility thereof shall be vested, and who shall be required to report to the Houses through Mr. Speaker, at the opening of each Session, the actual state of the Library.
- (b) No person shall be entitled to resort to the Library during the Session of Parliament except the Governor-General, the Members of the Privy Council, and of the Senate and House of Commons, and the Officers of both Houses, and such other persons as may receive a written order of admission from the Speaker of either House. Members may personally introduce strangers to the Library during the day-time, but not after the hour of seven o'clock P.M.
- (c) During a Session of Parliament no books belonging to the Library shall be taken out of the Building, except by the authority of the Speaker or upon receipts given by a Member of either House.
- (d) During the Recess of Parliament, the Library and Reading Room shall be open every day in each week, Sundays and holidays excepted, from the hour of ten in the morning until four in the afternoon, and access to the Library shall be permitted to persons introduced by a Member of the Legislature, or admitted at the discretion of the Librarians, subject to such regulations as may be deemed necessary for the security and preservation of the collection, but no one shall be allowed to take any book out of the Library except members of the Legislature, and such others as may be authorized by the Speaker of either House.
- (e) During the Recess of Parliament, no Member of either House not residing at the seat of Government shall have liberty to borrow or have in his possession at any one time more than three works from the Library, or to retain the same for a longer period than one month.
- (f) No other person who may be privileged by card, by the Speaker of either House, to borrow books from the Library,

shall be allowed to have in his possession more than two books at any one time, or to retain the same longer than three weeks, and all such persons shall return the books so taken when required by the Librarians

(g) No books of reference or books of special cost and value may be removed from the seat of Government under any circumstances

(h) At the first meeting of the Joint Library Committee at every Session of Parliament, the Librarians shall report a list of the books absent at the commencement of the Session, specifying the names of any persons who have retained the same in contravention of the foregoing Rules.

(i) In addition to the foregoing rules, the Joint Library Committee have agreed to the following New Rules, to which the attention of persons frequenting the Library, or making use of any books belonging thereto, is specially requested

1 It is strictly forbidden to make any mark by pencil or otherwise, in any books belonging to the Library, or to turn down leaves therein, or otherwise deface the same

2 No person (other than a Member of Parliament) is permitted to have access to any of the Galleries surrounding the Library without the express permission of the Librarian or unless accompanied by an officer of the Library

3 No visitor shall be permitted to remain in the Library with his hat on, nor will smoking, or spitting on the floor or carpet be permitted in any of the Library apartments

4 No audible conversation will be allowed in the reading room, nor shall any person be permitted to partake of refreshments therein, and no dogs shall be allowed in the Library

Canadian Provincial Parliaments.

In the Canadian Provinces the Rules governing the Libraries of the Provincial Parliaments are based mainly upon those in force at Ottawa, the modifications being shown below

Ontario —Rule 106 is the same as Ottawa Rule (a) Rule 107 reads

107 No person shall be entitled to resort to the Library during a Session of Parliament, except the Lieutenant-Governor, the Members of the Executive Council and Legislative Assembly, and the Officers of the House, and such other persons as may receive a written order of admission from the Speaker Members may personally introduce strangers to the Library during the day-time, but not after the hour of 6 o'clock p m

Rule 108 is equivalent to Ottawa Rule (c). Rule 109 reads:

109, During the Session, the Library shall be open daily, from 9 o'clock a m until 9 o'clock p m, and should the House remain in session after such hour, the library shall remain open until the House adjourns

Rule 110 is the same as Ottawa Rule (d) up to the word "collection," but allowing also the Clerk to grant admission to the Library at his discretion. Rule 111 makes the same provision as made by Ottawa Rules (e) and (g), and Rule 112 that of Ottawa Rule (h)

Quebec.—The English version of Rules 678 to 682 reads as follow

678 The Librarian shall have the custody and responsibility of all the books belonging to the Library and keep a proper catalogue thereof

679 The Librarian shall, at the opening of each Session, present to the House, through the Speaker, a printed report on the actual state of the Library with, appended thereto, a catalogue of the books added to the Library since the preceding report.

680 The Library and reading room shall be open daily, Sundays and holidays excepted. During the Sessions, they shall remain open from the hour of 9 a m until 9 p m, or until after the adjournment of the House or of its committees, if such adjournment takes place after nine

During the Recess of the Legislature, they shall remain open from the hour of 10 a m till 4 p.m except on Saturdays, when they may be closed at 1 p m

681 During the Sessions, the Lieutenant-Governor, the Members and Officers of the two Houses, the heads and deputy heads of departments, the bearers of an order of admission from the Speaker of either House, and the persons accompanying any Member of the Legislature, shall alone be entitled to resort to the Library and reading room

During the Recess of the Legislature other persons may be admitted to the Library, at the discretion of the Librarian

682 No books belonging to the Library shall be taken out, except by the authority of the Speaker of either House, or upon a receipt given by any Member of the Legislature, or by any head or deputy head of a department

Rules 683, 684, and 685 are Ottawa Rules (e), (f) and (g) respectively

Rule 686 reads. All persons admitted to the Library or to the reading room shall comply with the internal regulations in force. Rule 687 is Ottawa Rule (h) and Rule 688 authorizes the Clerk of the House to subscribe for such papers as may be directed by the Speaker.

Manitoba—Rule 104 is Ottawa Rule (a), Rule 105 is Ontario Rule 107, except as to a limitation of the hour after which Members may personally introduce strangers. Rule 106 is Ottawa Rule (c). Rule 107 reads.

107. During the Recess of the Legislature, the Library shall be open every day in each week (Sundays and holidays excepted) during the hours of Government business, and access to the

Library shall be permitted to persons introduced by a Member of the Legislature, or admitted at the discretion of the Clerk or Librarian, subject to such regulations as may be deemed necessary for the security and preservation of the collection, and such others as may be authorized by Mr. Speaker, but no one shall be allowed to take any books out of the Library, except by permission of the Librarian.

Rule 108 embodies Ottawa Rules (e) and (g) except that the Manitoba Rule applies to Members wherever resident Rule 109 is Ottawa Rule (h)

British Columbia—Rule 123 is Ottawa Rule (a); Rules 124 and 125 respectively Ontario Rules 107 and 108. Rule 126 reads:

126 During the Recess of Parliament, the Library shall be under the charge of the Provincial Secretary, and access to the Library shall be permitted to persons introduced by a Member of the Legislature, or admitted at the discretion of the Provincial Secretary, subject to such regulations as may be authorized by Mr. Speaker, but no such person shall be allowed to take any book out of the House

Rule 127 is Manitoba Rule 108 and British Columbia Rule 128, Ottawa Rule (h)

Saskatchewan.—Rule 99 is Ottawa Rule (a), Rule 100 Ontario Rule 108, Rule 101 is Manitoba Rule 107 with the omission of all words after "Mr. Speaker" Rules 102 and 103 are Manitoba Rule 108, and Saskatchewan Rules 104 and 105 are Ottawa Rules (f) and (h)

Alberta.—Rule 596 is Ottawa Rule (a), Rule 597 British Columbia Rule 124, and Rule 598 Ottawa Rule (c) Rule 599 is the same as Saskatchewan Rule 101, but with the addition of the words—"but no one shall be allowed to take any book out of the House" Rule 600 is British Columbia Rule 127. Rule 601 reads

601 The direction and control of the Library shall, during the sittings of the Legislative Assembly, be vested in the Speaker, and at other times in the President of the Executive Council

Rule 602 is Ottawa Rule (a).

Australian Federal Parliament.

The following information has been courteously furnished by the Clerk of the Commonwealth Senate, Mr. G. H. Monahan, C.M.G. The Library of Parliament and appointments thereto fall under the President of the Senate and the Speaker of the House of Representatives jointly The Library is administered by the Librarian, his department being a scheduled one under

the Commonwealth Public Service Act, 1922-1924. We are indebted to Mr. Kenneth Binns, the Librarian, for the courtesy of the following information. Mr. Binns states: The Rules for the government of the Library as revised and adopted by the Library Committee (a Joint Committee) on 8th December, 1927 (given below), have proved satisfactory and sufficient for the smooth working of the Library. Occasional difficulties, however, have arisen with regard to the enforcement of Rules 6 and 7 governing the loan and retention of books. The matter has been brought to the notice of the Library Committee, which is seriously considering whether some more liberal number of books may not be allowed Members, and whether a stricter enforcement of the time-limit in cases where there is a demand for the book in question should not be insisted upon. It is the increasing use made of the Library in connection with Members' official duties which led to a consideration of these changes. Rules 2, 3, 4 and 5 relating to the use of the Library by others than sitting Members are interpreted very liberally and, in fact, the reference requirements of officers of the Commonwealth Public Service are met almost exclusively by the Library. The specialized collection of Australian history and literature are freely available for reference use to students throughout Australia.

The Rules, which are usefully printed on both sides of a bookmark, with a semi-circular slit at the top for gripping the last reading-page, and headed, "Commonwealth Parliament Library," subscribed with the date of their adoption and showing the arms of the Commonwealth, read as follow:

1 Any Senator or Member of the House of Representatives of the First Parliament of the Commonwealth shall be entitled for life to all such privileges connected with the Commonwealth Library as are from time to time enjoyed by the sitting Members of Parliament.

2 The like privileges shall also be enjoyed for life by any person who shall have, for a period of not less than three years, occupied a seat in the Parliament of the Commonwealth, or for any period shall have held office as President, Speaker, or as a Minister of the Crown, provided that this privilege shall not extend to books acquired within three months.

3 Such Officers of Parliament as are from time to time approved by the Library Committee shall be entitled to the use of the Library.

4. In addition to the above-mentioned, Judges of the High Court, Ministers of the Crown in the State Parliaments, and Permanent Heads of the Departments of the Commonwealth, may, on application, be entitled to borrow specified books for the period allowed to Members, and so far as is required in the course of their official duties.

5 The Library shall be available, for reference purposes only, to Members of the State Parliaments, and to such other persons as the Chairman of the Library Committee shall from time to time approve, also to Officers of the Commonwealth Public Service engaged in research or requiring information in connection with their official duties, and to accredited representatives of the Press

6 Those entitled to borrow books from the Library may not have on loan more than ten volumes at any one time, and shall sign a Library borrowing card for each work taken out

7. Books may not be kept for more than three months, and every two months the Librarian shall cause a notification to be sent to persons entitled to the use of the Library giving a statement of all books held by them, with a request for the return of any overdue books, or the renewal thereof for a term not exceeding three months

8 In respect of books acquired within three months, the Librarian is empowered to limit the time they may be on loan to any one person to one month

9 In the event of a book issued on loan being required for any important or urgent purpose, the Chairman of the Library Committee may instruct the Librarian to request its immediate return

10 The Librarian shall report to the Chairman of the Library Committee any instances in which books held by Members, or others entitled to the use of the Library, have been unduly retained when applied for.

11 Works of special value, works of reference, works on Constitutional law, Law Reports, maps, and on the direction of the Chairman of the Library Committee, any books likely to be in request in relation to any debate, shall not be removed from the Parliament Buildings

12. Bound volumes of newspapers or magazines shall not be removed from the Library except to the Chamber of the Senate, or the House of Representatives, for use in debate, and shall be returned as soon as done with

13 Anyone entitled to the use of the Library losing or defacing a book shall replace it, or the set, if it form part of a set, to the satisfaction of the Committee

14 No magazine, periodical, or weekly newspaper shall be removed from the Library after its arrival until the receipt of the next issue

15 Except by special permission of the Chairman of the Library Committee, only those entitled to the use of the Library shall be admitted to the Reading Room and the bookstacks

16 Smoking in any part of the Library is prohibited

17 The Librarian is required to report to the Chairman of the Committee any infringement of these Rules.

Australian State Parliaments.

New South Wales —The Rules of the Library of Parliament are as follow

1 The Library shall be open as follows

During the Session, from 9 a.m. to 4 p.m., or so long as either House is sitting, Saturdays, 9 a.m. to 12 noon, during Recess, from 10 a.m. to 4 p.m., and Saturdays, 10 a.m. to 12 noon

2 Any Member may take not more than three volumes at a time from the Library nor retain the same for a period exceeding ten days, but no book shall be available for loan until it has been in the Library for a period of one week

3 Any Member desiring to retain a Book for a longer period may renew the loan at the expiration of each successive ten days, provided no other Member shall have in the meantime expressed a wish to have the book, but no book can be retained for a longer period than one month

4 Any unbound periodical which has been in the Library for one week may be taken on loan for a period not exceeding two days if there be more than one copy available

5 A register shall be kept of the loan, return, and condition of the books, and no book, periodical, or pamphlet shall be taken out of the Library until an entry of the loan has been made, which entry the Member will be required to sign, or upon a written order from a Member

6 See Canberra Rule 13

7 Books of general reference, including bound Acts of Parliament and Debates, files of newspapers, atlases, maps, and such other works as the Committee may from time to time determine, shall not be allowed out of the Library except when in demand during a Sitting of either House for the purpose of reference in debate, and any volumes so required shall be returned at the close of the Sitting

8 Members of the Legislatures of the other Australian Colonies (including New Zealand) and of the Parliament of Great Britain and Canada may be admitted to the Library on the introduction of a Member, provided the name of the visitor so introduced, with that of the Legislature to which he belongs, be entered and authenticated by the Member introducing him in a book to be kept in the Library for that purpose

9. No stranger will be admitted into the Library unless accompanied by a Member, or with the permission of the Librarian in charge

10 Smoking and the serving of refreshments in the Library or reading rooms are strictly prohibited

11 The Librarian shall report to the Committee any infraction of these Rules

12 The foregoing Rules shall be printed, framed, and exhibited in the Library and reading rooms for the information of Members

Queensland — The Rules governing the Library of Parliament are as follows

Members have the right to the use of the Library on the following conditions

1 During Recess the Library shall be open on Mondays, Tuesdays, Wednesdays, Thursdays, and Fridays, from 9 a.m. to 4 p.m.,

and on Saturdays from 9 a m to 12 noon During Session the Library will remain open until the close of any sitting of the House

2 The books in the Library are divided into books of general reference and books which may be lent out to Members The former (in which are included Parliamentary Papers) are not to be removed from the Library without special permission from the Librarian unless they be required by a Member in course of debate or while sitting on Committee. Valuable illustrated works, maps, etc., are not to be removed from the Library

3. Newspapers shall on no account be taken out of the Library except for binding purposes and for reference in the Chamber and Committee Rooms; and no paper shall be cut or removed from its file

4. The Librarian, or in his absence the Assistants, shall issue volumes to Members, which issue shall be recorded on a card kept for that purpose and signed by the borrower, and which shall record the date of removal from the Library

5 Members must not exchange Library books with one another. These books must be returned to the Librarian, after which the card bearing the receipt for the book will be returned to the borrower.

6. No Member will be allowed to take more than three volumes at a time, for the reading of which fourteen days will be allowed, but upon a formal application to the Librarian a renewal of the loan may be made for seven days longer

7 If any work be kept by a Member a fortnight beyond the time permitted by the preceding Rule, and the ordinary notice has been disregarded, the Librarian shall send a notice, in the name of the Committee, requesting that it be returned without further delay, and if the book is not then returned within a reasonable time it shall be charged to the Member by whom it is so detained.

8 No quarterly or monthly periodical shall be considered within the class of books Members may borrow until it shall have been upon the Library table for one month, but the Librarian may permit quarterlies to be lent after they have been a week on the table, if not in particular request at the time Periodicals when bound up in volumes may be considered as books to be issued to Members

9 In the event of a Member applying for a book which at the time is in use by another Member, a memorandum book shall be kept in which the name of the required book shall be entered, and the Member making the application shall be the first to obtain the book after its return

10 See Canberra Rule 13

11 Smoking in the Library is strictly prohibited

12 The Librarian is required to report to the Library Committee any infringement of the foregoing Rules or any injury to the books.

South Australia—The Rules for the management of the Parliamentary Library, which are signed by the Chairman of the

Joint Library Committee and issued by order of such Committee, are given hereunder The Clerk of the Parliaments and the Clerk of the House of Assembly report that the Rules work satisfactorily.

The Library shall be open as follows. Sitting days, 9 a.m. to 9 p.m., Non-sitting Days, 9 a.m. to 5 p.m., and Saturdays 9 a.m. to 12 noon

1 Members shall be entitled to have on loan from the library not more than four volumes at any one time

2 Books may not be kept for more than fourteen days from the date of taking from the Library

3 See Canberra Rule 11

4 Anyone entitled to the use of the Library losing or defacing a book shall replace it, or the set (if it form part of a set), to the satisfaction of the Committee, and, failing to do so, may by resolution of the Committee, be debarred from any further use of the Library

5 The Librarian shall report to the Chairman of the Library Committee any cases in which books held by Members and users of the Library have been unduly retained when applied for.

6 Except by the permission of the Librarian, no stranger shall be admitted to the Library unless accompanied by, or having an order from, a Member of Parliament or the head of a Government department

7 Once in each year the Librarian shall cause an account of stock to be taken, and shall subsequently submit a report to the Library Committee, with a list of the books lost or unduly retained during the year

8 On sitting days the reading room shall be reserved for Members only.

9 Any person having occupied a seat in Parliament for one term shall be entitled for life to all the same privileges connected with the Library as Members

10 Such Officers of Parliament as are approved by the President or the Speaker shall be entitled to the use of the Library

11 Members of the Commonwealth and other State Parliaments may use the Library, but shall not be permitted to take books out of the State

12 The Librarian shall be the sole custodian of the Library and its contents, and Members and others are not permitted to use same when the Library is closed.

13 The Librarian is required to report to the Chairman of the Committee any infringement of these rules

14 Any person infringing any of the foregoing rules shall, at the will of the Committee, be liable to the forfeiture of all his privileges connected with the Library

Tasmania —The Rules for the Regulation of the Library of Parliament, which are issued by order of the Library Committee and signed by the Clerk of the House of Assembly, who is also Librarian, are as follow:

1. No book shall be taken from the Library unless with the knowledge of the Librarian or Assistant Librarian.
2. The books in the Library are divided into books of reference and books which may be circulated the former are not to be removed from the Library
3. No book shall be issued to a Member for a longer period than fourteen days; but upon special application a renewal, not exceeding seven days, may be granted
4. The number of volumes which any Member shall be allowed to retain in his possession at one time shall not exceed four
5. In the event of any Member applying for a book which at the time is not in the Library, an entry shall be made of his application, if the Member so desire it, and the applicant shall be the first to obtain it after its return to the Library
6. Quarterly and monthly periodicals shall lie upon the table of the Library for one week after their arrival No Member shall be allowed to hold more than one at a time, or to retain the same for a longer period than seven days
7. Within a fortnight from the meeting of Parliament, annually, all books belonging to the Library shall be called in, and their circulation suspended until seven days after the opening of the Session This Rule shall not apply to new magazines and reviews
8. See Canberra Rule 13
9. The Library shall be reserved for the exclusive use of Members during the Session During Recess ex-Members may be admitted from 10 till 4 daily Visiting Members of the Commonwealth and State Parliaments are privileged to have the use of the reading room at all times
10. Any Member failing to comply with these Rules and Regulations may be suspended by the Library Committee from the privilege of having books issued to him from the Library
11. An Annual Report shall be presented to Parliament of the proceedings of the Committee, showing the condition of the books in the Library generally, giving a list of the works added during the year, and of the books missing, and stating what measures have been taken to recover or replace the latter
12. Smoking in the Library and reading room is strictly prohibited

Victoria—The Clerk of the Parliaments states that the Rules for the regulation of the Parliamentary Library are as follow.

1. Members may not take out more than six volumes at any one time, and in every case are requested to report the books taken to the Librarian or Clerk, that they may be entered in a book to be kept for that purpose
2. Seven days are allowed for each volume, but, unless when inquired for, a strict compliance with this rule will not be insisted on Books newly received shall be issued according to priority of application, and must not be kept for more than four days.

3 Valuable illustrated works, maps, and books of reference generally are not to be removed out of the Parliament buildings

4 Overdue books, which have been written for, must be returned within three days at furthest

5 Once in each year the Librarian shall take an account of stock, and for that purpose shall address a circular to each Member who has books in his possession, requesting that they may be returned within a given time After stock is taken the Librarian shall submit a Report to the Library Committee, to which he shall attach a schedule specifying such books as have been lost (if any) during the year, or unduly withheld

6 See Canberra Rule 13

7 Any works may be purchased for the Library upon the request of a Member of Committee

8 No Member will be at liberty to take from the Library more than one periodical publication at any time, and a quarterly publication may not be kept for more than one week

9 No newspapers or periodicals may be removed from the table of the Library during the first month after their receipt

10 No monthly magazine or other periodical may be kept for more than three days during the first month after such work may have been received into the Library.

11 No stranger will be admitted into the Library unless accompanied by a Member, and then only for the purpose of viewing the Library

12 No ex-Member of Parliament, unless he be an Executive Councillor, is entitled to any of the privileges of the Library.¹

13. Duplicate works are not to be sold either to Members of the Committee or Officers of the House

14 Smoking in any part of the Library is prohibited

15 The Librarian is required to report to the Library Committee any infringement of these Rules

Western Australia—The Clerk of the Parliaments and the Clerk of the Legislative Assembly, the latter acting also as Librarian, give the Library Rules as follow:

1 Members may not have on loan from the Library more than three volumes at any one time, and when taking out a book shall enter same on slips provided in the Library

2 Books may not be kept for more than fourteen days

3 See Canberra Rule 11

4 The Librarian shall report to the Chairman of the Library Committee any cases in which books held by Members, or others entitled to the use of the Library, have been unduly retained when applied for.

5. See Canberra Rule 13

6 See Canberra Rule 14

¹ Since 1898 this Rule has been interpreted to include those ex-Members who have been Members for not less than 5 years and such ex-Members are permitted to borrow only those books which have been in the Library for not less than 12 months. Certain Commonwealth Members and ex-Members and Senior Officers with Commonwealth privileges have also been given similar privileges.

7. Except by permission of the Librarian, no stranger shall be admitted to the Library unless accompanied by, or having an order from, a Member of Parliament

8. While Parliament is in Session, persons actually engaged in reporting the proceedings of Parliament may be allowed access to the Library for purposes of reference

9. The Library shall not be used for the purpose of receiving deputations, for the meetings of Royal Commissions or Select Committees (except the Library Committee), or for meetings of any sort whatever, without the express consent of the Chairman of the Library Committee previously obtained

10. Any ex-Member of the Legislative Council or Legislative Assembly who has served in two Parliaments, and sitting Members representing the State in the Federal Parliament, and sitting Members of any Parliament in the British Empire, shall be entitled to all such privileges connected with the Library as are from time to time enjoyed by the sitting Members of Parliament

11. The like privileges shall also be enjoyed for life by any person who shall have held office as President, Speaker, or as a Minister of the Crown

12. The Librarian is required to report to the Chairman of the Committee any infringement of these rules

New Zealand.

We are indebted to the Clerk of the House of Representatives and to the Librarian, Mr. G. H. Scholefield, O B E , D S C , F.R.Hist.S , for the information in regard to the Library. The Library Committee is authorized by Resolution of the House to make and enforce rules for the Library of the General Assembly (as the Parliament is named).

1. For the convenience of Members of both Houses of the Legislature.
2. For the regulation of privileges to be granted to Members, ex-Members, and other persons
3. For the recovery of the amount of damage for loss of any books or other property under the control of the Library Committee
4. For any other matters incidental to or consistent with the control and management of the Library and for the more effectual carrying out of the same.

The granting of recess privileges to members of the public has grown to such an extent as to constitute a problem from the point of view both of staffing and of the wear and tear on books. The General Assembly Library is recognized as a National Library as well as a Parliamentary Library. Proposals for reorganization with a view to improving both sides and better defining their respective functions are under consideration.

The Rules for the management of the Library of Parliament are as follow:

- 1 (1) During each Session the Library shall be open—
 - (a) When either House is sitting,
 - (b) From 8 a m to 11 p m on week-days,
 - (c) From 9 a m to 10 p m on Sundays,
 - (2) During the Recess the Library shall be closed on those days on which the Government offices at Wellington are closed, and shall be open—
 - (a) From 9 a m to 5 p m on week-days other than Saturdays;
 - (b) From 9 a m to 1 p m on Saturdays
- 2 The Joint Library Committee shall from time to time prepare and may alter—
 - (1) A "List of persons with full privileges," who shall be entitled—
 - (a) To enter, remain in, and use the Library,
 - (b) To borrow books, but so that no such person shall have more than ten books at any one time
 - (c) If a Member of Parliament not residing in the City of Wellington or its suburbs (but not otherwise), and during a Recess only, to borrow books by post
 - (2) A "List of persons with limited sessional privileges," who shall, subject to any limitations noted on the list, be entitled, during each Session only—
 - (a) To enter, remain in, and use the Library, with the exception of the sociology room, on days on which either House sits, during the hours of 12 30 p m to 2 p.m., and 6 p m to 7 p m, and on other days during the hours when the Library is open,
 - (b) To borrow books, but so that no such person shall have more than two books at any one time, nor borrow any book which has been in the Library for less than three months.
- The Joint Library Committee (and during a Recess the Recess Committee) shall from time to time prepare and may alter—
 - (3) A "List of persons with limited recess privileges," who shall, subject to any limitations noted on the list, be entitled during each Recess only—
 - (a) To enter, remain in, and use the Library only for the purpose of referring to or studying such books not being works of fiction, relating to a special subject, as he shall specify to a member of the Library staff;
 - (b) To borrow any such books but so that no such person shall have more than two books at any one time.
- 3 Such lists shall be entered in full in a register-book to be provided for that purpose, and every alteration thereof shall also be entered in full therein, and such register-book shall be produced at every meeting of the Joint Library Committee and of the Recess Committee. Copies of the lists for the time being in force, signed by the Chairman, shall be kept at the Library, available for reference and exhibition when required.

4. Privileges shall not be extended to any person other than in accordance with such lists, provided always—
 - (a) That the Chairman of the Joint Library Committee (or during the Recess the Chairman of the Recess Committee or the Chief Librarian) may, in his discretion, give written permission to literary workers, students, or visitors to Wellington to make temporary use of the Library (not exceeding one calendar month at any one time) for such specific or general purposes as are mentioned in such permission. The granting of such permission, and the terms thereof, shall in each case be entered in a separate part of the register-book hereinbefore mentioned
 - (b) That wives and daughters of Members of Parliament are permitted to use the main reading room upstairs during each Session of Parliament, but are not to occupy any of the writing-tables,
 - (c) That any person introduced personally or in writing by a Member of Parliament, may, on the day when so introduced, be shown over the Library
5. All privileges shall be subject to the regulations for the time being in force, and any or all may be suspended or revoked in any particular case by the Joint Library Committee (or during a Recess by the Recess Committee)
6. The main reading room and the sociology room shall be for the general use of Members, and no seat or table may be appropriated by an individual Member to the exclusion of others
7. Persons using books in the main reading room or sociology room must not attempt to replace such books on the shelves, but must leave them on the table to be replaced by the attendants
8. Any private papers or correspondence left on the tables in the main reading room or sociology room must be removed by the attendants and handed to the Chief Librarian, who shall return such papers or correspondence to the owners
- 9 (1) The term "works of reference" for the purpose of this rule includes—
 - (a) Statutes, *Gazettes*, Parliamentary journals, reports, and publications, Law Reports, law books, and maps;
 - (b) valuable illustrated books;
 - (c) old and rare editions,
 - (d) bound newspapers, magazines, and periodicals,
 - (e) any book which the Chief Librarian shall for the time being label "Reference," or "Not to be taken out of the Library"
- (2) Works of reference shall not be taken out of the Library in any case, save only that, at the written request of a Member of Parliament for the purpose only of use in a debate in a Legislative Chamber, any work of reference, not being within either of the classes (b) or (c), may be obtained from a member of the Library staff, in which case it must be signed for and be returned to a member of the Library staff not later than the time for the closing of the Library on the day when obtained

- 10 The borrower of a book shall, personally, or by his agent specially authorized in writing signed by him, indicate it to a member of the Library staff, who shall enter it in a book kept for that purpose, and obtain therein a signed receipt. A record shall be kept separately showing the books borrowed, and by whom, and when
- 11 Any Member entitled and desiring to borrow books by post during a Recess may, in writing, request the Chief Librarian to send him certain specified books, whereupon the Chief Librarian shall cause the books to be despatched by parcel-post. The like entries and record shall be made as in the case of a book borrowed in person (the Chief Librarian signing a receipt), and the person to whom the books are despatched shall be deemed "the borrower" for the purposes of these rules. All books despatched by post must be returned by the borrower within three days after the gazetting of a Proclamation convening Parliament for the despatch of business
- 12 Every borrower must return every book borrowed by him or by his authority not later than one month during a Session, or two months during a Recess, after the date of its issue. It must be handed to a member of the Library staff in order that its return may be duly noted and recorded. Should a borrowed book be urgently needed for a special purpose the Chairman may direct that it be returned forthwith, in which case it shall be returned accordingly, notwithstanding that a month may not have elapsed since the date of issue
- 13 On the first day of each month the Chief Librarian shall send to each borrower of a book who has had it for upwards of one month a notice reminding him that it has not yet been returned. At each meeting of the Joint Library Committee or the Recess Committee, as the case may be, the names shall be read of all borrowers who have failed to return books for one month after issue during a Session, or two months during a Recess
- 14 The borrower of a book shall return it in as good condition as when issued to him. If it shall be meanwhile damaged he shall pay to the Chief Librarian such sum as the Joint Library Committee or the Recess Committee shall fix as properly payable in respect of such damage. If it shall not be returned within three months after issue he shall pay to the Chief Librarian such sum as the Joint Library Committee or the Recess Committee shall fix as the value of the book, and if it be one of a set, such Committee may fix the value of the set as the value of the book, in which case the borrower shall on payment be entitled to the remainder of the set.
- 15 Every other member of the Library staff shall report to the Chief Librarian any breach of rules that shall come to his notice and the Chief Librarian shall report to the Committee at every meeting all breaches of rules which have occurred since the last meeting, in order that the Committee may take such steps to punish the offender or otherwise as may be thought desirable.
16. All rules and alterations of rules, and all resolutions with

reference to the Library passed by either House, shall be entered in full in the minute-book.

17. A copy of the rules shall be sent to each person admitted to the privileges of the Library

LIST OF PERSONS ADMITTED TO LIBRARY PRIVILEGES

No 1 —FULL PRIVILEGES

Entitled—

- (a) To enter, remain in, and use the Library,
- (b) To borrow books, but so that no such person shall have more than ten books at any one time
- (c) If a Member of Parliament not residing in the City of Wellington or its suburbs (but not otherwise), and during a Recess only, to borrow books by post

His Excellency the Governor-General.

Members of both Houses

Members of any Parliament within the Empire visiting New Zealand.

Members of the various Empire Parliamentary Associations visiting New Zealand

Judges of the Supreme Court

The Senior Officer, New Zealand Naval Division

The General Officer Commanding the New Zealand Military Forces

The Governor-General's Staff

The Auditor-General

The Solicitor-General

The Clerk and Clerks-Assistant of each House

H. Otterson, Esq., ex-Clerk of the House of Representatives

The Gentleman Usher of the Black Rod

The Serjeant-at-Arms

The Law Draftsman

The Chief *Hansard* Reporter

The Reader of the House of Representatives

The Record Clerk of the House of Representatives

The *Hansard* Supervisor

The *Hansard* staff

The Government Printer.

The Director, Dominion Museum

Mrs J. Ballance

Mrs R. J. Seddon.

Mrs W. F. Massey

Ex-Prime Ministers and their wives

Ex-Members of the General Assembly having not less than six years' service

Union of South Africa Parliament.

We are indebted to Mr P. Ribbink, the Joint Librarian, for his courtesy in supplying the following information in regard to the Library of Parliament at Cape Town.

The Library of the Parliament of the Union was actually started when the old Cape Legislative Assembly, on the 25th July, 1854, took the first step towards the establishment of a library for the use of both Houses of Parliament of the Cape of Good Hope and asked for a sum of £100 for the purchase of reference books. The Library now possesses about 80,000 volumes, of which 23,000 consist of Parliamentary documents of the British Empire, serial publications, etc., and 27,000 volumes of other literature dealing with political science and such other subjects as are required to keep Members of Parliament informed of the past and present tendencies of human thought and progress; and, finally, 30,000 volumes dealing with the continent of Africa, the nucleus of which was the Mendelssohn Collection of Africana bequeathed to Parliament by the late Sidney Mendelssohn in 1917. The Library of Parliament is open to those persons mentioned in Rule 7, as amended. The Africana Collection, to which there is a special entrance, is open to students and the public for research purposes. The control of the Library is regulated by certain Standing Rules and Regulations drawn up and issued from time to time by Mr. President and Mr. Speaker, subject to the confirmation thereof by the Joint Library Committee of the two Houses. It may be of interest to know the value of the regulation obliging the Librarian to report once a year what books he has been unable to recover from Members. Indeed, for 15 years not a single book has been lost to the collection through non-return. Books, of course, have been lost by Members, but they have in each case provided new copies at their own expense, rather than be reported. A great factor in preventing the loss of books by Members is a careful system of "reminders" which is unfailingly followed up by correspondence. Another matter which also calls for unceasing vigilance on the part of the staff is the insufficiency of packing used by Members in returning books by post. Each package sent to Members is accompanied by a franked label and a printed request to use the cardboard packing provided when returning books. This request, however, is often ignored and books are received in paper wrappers only, but an immediate letter sent to the offending Member generally prevents a repetition of the negligence.

A card catalogue on the Dewey Decimal Classification Scheme is maintained in the Library, which fits in with the majority of the schemes in practice in Great Britain, the Union, and the other Dominions, and in the United States of America,

etc. The Catalogue provides a key for reference to authors, subjects and titles. The Librarian reports to the two Houses through Mr. President and Mr. Speaker at the opening of each annual Session the actual state of the Library. In addition, the Librarian issues printed periodical lists of books added to the Library, each title being accompanied by a descriptive note of the volume. Also, bibliographies of important subjects are published from time to time, such as "The Afrikaans Language and Literature" and "The Relationship between European and Coloured Races."

In all, about 200 persons are privileged to take out books on loan from the Library, while approximately 12,000 volumes per year are used in the Library of Parliament. 5,000 works are lent out of the Library, while 500 students and research workers utilize the Africana Collection. Of the books lent out each year, the following figures indicate the main subjects dealt with:

| | | | |
|----------------------|-------|------------------|----|
| Sociology . . . | 1,988 | Religion | 45 |
| Biography . . . | 755 | Philology | 40 |
| Africana . . . | 598 | Philosophy | 32 |
| Serials . . . | 260 | Literature . . . | 29 |
| History . . . | 240 | Fine arts | 20 |
| Geography and travel | 172 | Natural science | 10 |
| Useful arts . . . | 52 | General . . . | 10 |

Both the Senate and the House of Assembly have their own Members' Newspaper Room, which come under the Clerk of each House, subject to their respective Internal Arrangements Select Committees.

With exception of the amendments given in the respective footnotes, the following rules relating to the appointment, office and duties of the Joint Parliamentary Librarian were recommended by the Joint Library Committee of the two Houses and concurred in by both Houses, 7th June, 1913

1 A proper catalogue of the books belonging to the Library shall be kept by the Librarian, in whom the custody and the responsibility therefor shall be vested, and who shall be required to report (in duplicate original) to the two Houses through Mr. President and Mr. Speaker, at the opening of each annual Session, the actual state of the Library

2 The Library Committee appointed each Session of Parliament by each House with power to confer with the corresponding Committee of the other House will aid Mr. President and Mr. Speaker with their counsel and advice in carrying out the Rules in regard to the Library of Parliament, and in suggesting

further improvements and additions to the collection. (See also Rule No 9)

3 At the first meeting of the Library Committee every Session of Parliament, the Librarian shall report a list of books the return of which he has been unable to secure, specifying the persons in whose names such books are standing

4 The Library shall be open

(a) when Parliament is in Session upon every day, Saturday afternoons and Sundays excepted, between the hours of nine o'clock in the morning and six o'clock in the afternoon, and upon every day upon which either House or both Houses of Parliament is sitting until the rising of whichever House is last sitting, and the Librarian shall make the necessary arrangements in regard thereto

(b) during the Recess upon every day (Sundays and Public Holidays excepted) during such hours as may be determined by Mr President and Mr Speaker

5 No books belonging to the Library shall be taken out of the Library without being entered opposite the Member's name in a book provided for that purpose, and on no account is any valuable illustrated work, map or book of reference, to be removed from the Houses of Parliament at any time either during the Session or Recess except with the signed authority of Mr President or Mr Speaker, anything to the contrary in these Orders notwithstanding¹

6 (a) Subject to the discretion of Mr President and Mr Speaker, any Member of either House shall be allowed, during the Recess, to have forwarded to his place of residence books² from the Library of Parliament on depositing with the Librarian the sum of £1 (one pound) sterling as a guarantee against loss, or damage to, any such book, no such book to be retained by any Member for a longer period than fourteen days if such Member reside in Cape Town or suburbs, or thirty-one days if such Member reside elsewhere; and no book shall be taken or sent beyond the Union¹

(b) Members will be held responsible for the condition and safe-keeping of volumes standing in their names, and any volume, or the set, if it form one of a set, lost or defaced must be made good by the Member in whose name it stands.

(c) Overdue volumes will be written for by the Librarian and must be returned immediately on such application. A Member desiring to keep a work more than fourteen or thirty-one days as the case may be, may make a fresh or new application

¹ Amended in 1929 That in the case of a Member of Parliament not returning a library book, etc, during a Session, within 14 days after the date such book, etc, has been taken out and during a Recess within the times prescribed in Rule 6(a), such Member shall not be allowed to take any further book, etc, from the Library until the missing book has been so returned or the value thereof paid to the Librarian

² The Rules amended generally in 1925 That during a Recess of Parliament, no Member be permitted to take out more than four volumes at a time, provided that in the case of reference works such number may be increased at the discretion of the Librarian

- (d) Whenever a Member returns any volume he shall hand it in to one of the Library staff who shall notify the date of its return in the column set apart in the delivery book for that purpose
- (e) Any Member desirous of having a work or volume added to the Library shall enter such request in a book to be kept for that purpose, and such application shall be considered by Mr President or Mr Speaker, who will, if the same be approved of and if there be funds for that purpose, authorize such purchase
- (f) Members shall be entitled to take out reference books for use only within the precincts of the building, but such books shall be returned to the Library immediately they are finished with

7 No person shall be entitled to resort to the Library except the Governor-General, the Chief Justice and Judges of the Supreme Court, the Members and Officers of Parliament, and such other persons as may receive a written order of admission from Mr President or Mr Speaker¹

8 Mr President and Mr Speaker are empowered to appoint and remove, subject to the concurrence of the Library Committee of each House sitting together, a Librarian, Assistant Librarian and any Clerk or Messenger who may from time to time be employed in connection with the Library, whose salaries shall be fixed by such Committees and charged against the vote of the Joint Parliamentary Expenses

9. Mr President and Mr Speaker shall, from time to time, issue such rules in regard to the Library and the duties of the Librarian and his staff, or amend or cancel any of the foregoing rules as they shall deem expedient, subject to the confirmation thereof by the respective Library committees of the two Houses sitting together at their next meeting, and in them shall be vested the control and supervision of the said Library

10 The Librarian shall address all communications and shall apply for instructions in regard to his duties to the Speaker of the House of Assembly, or if he be absent from the seat of Parliament then to the President of the Senate, from whom he shall receive all direction and authority in reference to the Library and its efficient working

11 For the addition of new books² to the Library, the Librarian shall prepare from time to time lists of books which shall be entered in a book retained for that purpose and signed, if approved, by either Mr. President or Mr Speaker

¹ Amended in 1926, to provide that no person shall be entitled to resort to, or take books out of, the Library, except the Governor-General, the Chief Justice and Judges of the Supreme Court, the members and officers of Parliament, ex-Members of Parliament also to be permitted to resort to the Library and, during Recess, to take out books on payment of a deposit of £2 Mr President or Mr Speaker may give permission to persons other than those named above to resort to the Library without having the privilege of taking out books

² The Rules generally were amended in 1928 That in future magazines be not removed from the Library earlier than a week after the date of their arrival, save in special circumstances at the discretion of the Librarian.

12 Any Officer of Parliament shall be allowed at all times to apply for and obtain any volume or work required by him, and such application directed to the Librarian shall be entered by him, and on return of such volume or work an entry thereof shall be duly made, but such work shall not be removed from the building during Session, or retained by him during Recess after the President or Speaker or any member has made application therefor

13 Subject to such rules as may from time to time be framed by Mr President and Mr Speaker

- (a) A catalogue of the books shall be kept by the Librarian as well as a card index of subjects, the former to be placed on the table of the Library and the latter made available for consultation in a suitable place
- (b) The Librarian's annual report and official documents shall be in duplicate original and addressed and forwarded to Mr President and Mr Speaker
- (c) A manuscript book shall be used by the Librarian, to be called "the Official Requisition and Pass Book" All communications and applications by the Librarian shall be entered in this book in the proper form and column and be by him (or his assistant) handed to Mr President and Mr Speaker, who will approve or dissent, or give directions in regard to any applications or communications
- (d) Whenever Mr President and Mr Speaker desire to give directions to the Librarian, they shall be furnished with this book and enter therein anything necessary to explain such directions, and the fulfilment thereof shall by the Librarian be entered with the date and his initial thereto at the foot of the same in the column "Librarian's Remarks"
- (e) The Library Staff shall assist the Librarian in any work he may direct them to do in connection with the Library. No absence of any Officer is allowed without the leave of Mr President or Mr. Speaker, and such leave and the application for same shall be entered as an application in the book
- (f) The Librarian shall have authority to replace any books or reviews not returned after due notice and to charge the cost of the same against the deposit of a member, who shall forthwith be notified of the amount
- (g) The Librarian shall keep a deposit book showing the amount paid by each Member and any charges made on account of books, not returned, and shall be responsible for the return of the balance due to the Member on notification that books are no longer required to be forwarded

14 For the purpose of these rules the Clerk of the Senate shall act in the absence of Mr. President and the Clerk of the House of Assembly in the absence of Mr Speaker

15 For the purpose of these rules, "Officer of Parliament" shall mean the Clerk and Clerk-Assistant of either House, the Joint Parliament Draftsman, and all members of the permanent clerical staff of either House

Union Provincial Councils.

As Cape Town became the seat of the Parliament upon the advent of Union, and the Union Parliament occupied and extended the Houses of Parliament buildings of the old Colony of the Cape of Good Hope, the newly created Provincial Council of that Province had to be provided with new quarters, and the Library of the old Cape Parliament became that of the Union Parliament. In the other three Provinces, Natal, Transvaal and the Orange Free State, the Provincial Councils took over the Libraries of the Parliaments of those former Colonies. Today, no particular Rules exist in regard to the management of those Libraries, neither have any Librarians, or Provincial Council officials to act as such, been appointed.

South West Africa.

No separate library exists for the use of Members of the Legislative Assembly.

Irish Free State Parliament.

The following Rules for the administration of the Joint Library were adopted by the Joint Library Committee of the Seanad and the Dáil, on 19th May, 1926.

- 1 The direction and control of the Library shall be vested in the Ceann Comhairle¹ and the Cathaoirleach² jointly, who shall be empowered to add to, alter or cancel these rules as occasion may require
- 2 The Joint Library Committee set up by both Houses will assist and advise the Ceann Comhairle and the Cathaoirleach in carrying out the rules and in suggesting further improvements and additions to the collection
3. Except on Sundays, Public Holidays and Saturday afternoons (after 1 p m), the Library shall be open upon every day when either House of the Oireachtas is sitting until the rising of whichever House is last sitting, and when neither House is sitting between the hours of 11 a m and 6 p m
- 4 The Ceann Comhairle and the Cathaoirleach shall, from time to time, issue such directions as to them shall seem expedient in regard to the Library, and the duties of the Librarian and his staff
5. The Librarian shall prepare, keep and be responsible for a Catalogue of the books belonging to the Library.
- 6 (a) The Librarian shall prepare lists of books from time to time, which lists shall be submitted to the Joint Library Committee, who shall recommend purchases when desirable
- (b) Any Deputy or Senator desirous of having a work or volume included in the Librarian's lists shall enter a request for such work or volume in a book to be kept for that purpose.

¹ President of the Senate

² Speaker of the Dáil

7 Subject to the discretion of the Librarian any Deputy or Senator may take books from the Library for use only within Leinster House, but such books shall be returned to the Library before closing hour on the day of issue. Provided that the Librarian shall have discretion not to allow valuable works to be removed from the library.

8 Readers shall be responsible for the safe keeping of any work or volume borrowed by them and any work or volume lost or defaced must be made good by the borrower.

9 No person shall be entitled to resort to the Library except Deputies, Senators and Officers of the Oireachtas,¹ and such other persons as may receive a written order from the Ceann Comhairle or the Cathaoirleach.

Southern Rhodesia.

Mr J G Jearey, O B E., when the Clerk of the Parliament, informed us that the Librarian of the Parliament Library is also Serjeant-at-Arms, and that the Rules work fairly well. The deposit of £1 when taking out books during a recess is not insisted upon. Mr. Speaker is also empowered by a Resolution of the Library Committee to order any new books he considers advisable.

The Rules for the administration of the Library are as follow:

1 to 5 both inclusive. (*See* Union Rules 1 to 5 both inclusive but without the amendments.)

6 (a) (*See* Union Rule 6 (a) substituting "Salisbury" for "Capetown" and "Southern Rhodesia" for "Union")

6 (b) to (f) (*See* Union Rules 6 (b) to (f), without amendments.)

7 No person shall be entitled to resort to the Library except the Governor, the Senior Judge and Judges of the High Court, the Members and Officers of Parliament, Heads of Government Offices and such other persons as may receive a written order of admission from Mr. Speaker.

8 and 9 (*See* Union Rules 8 and 9.)

10 The Librarian shall address all communications and shall apply for instructions in regard to his duties to the Speaker of the Legislative Assembly, or if he be absent from the seat of Parliament, then to the Clerk of the Legislative Assembly, from whom he shall receive all direction and authority in reference to the Library and its efficient working.

11 to 15 both inclusive (*See* Union Rules of those numbers, but without the Union amendments.)

Otherwise, with the exception of the reference in the Union Rules to two Houses of Parliament and in those of Southern Rhodesia only to one House (the Upper House not having yet been constituted), the Rules are the same.

¹ Parliament.

Indian Central Legislature.

Mian Muhammad Rafi, B.A., the Secretary of the Legislative Assembly, kindly informs us that there is one common Library for the use of the Members of the Council of State and the Legislative Assembly. The Rules under which it is governed are as follow

1. The Library is intended for the use of the Members of the Council of State and the Legislative Assembly. It is also open to use by the Princes during their meetings in New Delhi.
2. All applications for the loan of books or other publications should be made to the Librarian.
3. Ordinarily not more than four volumes at a time can be taken on loan by Members.
4. Members must return the books taken on loan by them within seven days from the date of issue. No fresh books will be issued to any Member who has already in his possession a book or books for more than seven days.
5. Encyclopædias, Dictionaries, Year-books, Atlases, Periodicals, books on art, paintings and other illustrated books and books of general reference shall not be removed from the Library.
6. From the time books are issued to Members until they are received back by the Librarian, Members will be responsible for their condition and will be required to replace any such books if lost or damaged.
7. No notes or marks of any kind shall be made on Library books.
8. Members are requested to observe silence in the reading room of the Library.
9. Outsiders, unaccompanied by Members, are not allowed to come into the reading room of the Library.
10. Suggestions for purchase of new books and newspapers may be made by Members in the "Suggestion Register" which is placed in the Library. A list of books and newspapers suggested will be circulated to the Members of the Library Committee for their opinion and the books and newspapers recommended by all or majority of the Members of the Committee will be purchased.
11. In case of emergency, the Secretary of the Library Committee shall have the power to authorize purchase of books and newspapers.

Indian Provincial Legislatures.

Madras.—Diwan Bahadur R. V. Krishna Ayyar, B.A., M.L., now the Secretary to the Madras Legislature, kindly informs us that the Rules of the old Madras Legislative Council Library were as follow

1. The Library will be open daily from 11 a.m. to 4 p.m. except on Sundays and public holidays.
2. Books in Part I in the catalogue should not be removed from the Library.

- 3 No book may be taken out on loan except in accordance with these rules
4. Books should be applied for in the prescribed form and a separate form should be used for each book
- 5 Books (not exceeding 3 in number or 5 volumes in all) may be lent for a week at a time. If they are wanted for a longer period, the application may be renewed at the end of every week, provided that the books are returned to the Library at the end of one month from the date of issue, they should not be taken out again for one week
- 6 Any book may be recalled at any time by the Secretary at twenty-four hours' notice
- 7 The cost of books not returned will be recovered by the Secretary after due notice to the person responsible for their non-return or loss
- 8 The Library is primarily intended for the use of Members of the Legislative Council. Books may be consulted by, and issued to, officers of the Secretariat holding gazetted rank, and subject to the same rules as in the case of Members of the Legislative Council
9. Those who take out books on loan are requested to see that when returning books the signed forms kept in the Library as vouchers are returned to them, as they will be held responsible for the books so long as the above forms remain with the Librarian

United Provinces—Mr G K Hydrie, B A, LL B, now the Secretary of the Legislative Assembly, kindly informs us that the Rules for the management of the old Legislative Council, which worked satisfactorily, were as follow:

- 1 A Member may borrow three books at a time for a period not exceeding two weeks, provided that a book which is in special demand should be returned by such date as the Librarian may specify
- 2 No Member may take a book out of the Library without getting it charged to his name or take it upon himself to lend it to any other person
- 3 No books of reference will be issued, and certain other important books and official publications will be issued only for use within the precincts of the Council Chamber and must be returned on the same day
- 4 If a book is not returned within ten days of the despatch of the second request for its return, it will be taken as lost and a bill for its price will be presented for payment to the Member concerned.

General Remarks.—A Library of Parliament is essentially a "Statesmen's Reference Library", if there is a National Library or any other collection of works also under the control of the Librarian, that is a collection extraneous to the real purpose of a Library of Parliament. Even in regard to a

"Statesmen's Reference" collection, as new works are published, the Library, like a garden, is all the better for a periodical weeding out. The great difficulty in the administration of Libraries of Parliament is the suggestions made by individual M P's as to additions to the Library, many of these include books of little or no service to a Statesmen's Reference collection. A Parliamentary Library is a departmental library. Much money can be wasted in the duplication of "other subject" books, which would normally be included in a National or any public library, especially where the Parliamentary Library is not at the same time the National Library and where the latter is also located at the Seat of Parliament. If such National Library is housed in the Parliament buildings, there is the danger of that Library growing to such dimensions as seriously to curtail the accommodation in those buildings necessary for Members and other Parliamentary purposes. In New Zealand, it is noted, the privileges granted to members of the public and the character of the Library has constituted a problem, and proposals are under consideration better to define the respective functions of a National Library and a Parliamentary Library.

What is required in a Parliamentary Library are works such as assist M P's in the discharge of their duties. The Librarian should submit a list of books to the Library Committee and take suggestions from it. Even, however, when there is a controlling select committee of either, or both, Houses of Parliament, it is well for it to appoint three or four well-qualified Members of either House who are resident at the seat of Parliament also during Recess, to advise Mr. President and Mr. Speaker as to the books to be bought throughout the year out of the sum annually voted by Parliament for the purpose. They, too, can act as a good stand-by for the Librarian, when he submits to the Library Committee the list of the books to be purchased and the cost incurred, reports missing books or those to be discarded, and renders his annual report. In that way the money voted is expended to the best advantage and only upon works of practical usefulness to Members of Parliament and appropriate to a "Statesmen's Reference" collection.

A good example of these principles is afforded by the practice in regard to the House of Commons Library at Westminster which, with its vast experience gained over many years with a wide range of subjects, has remained true to its purpose, and where.

- (a) with regard to the choice of books, "Mr Speaker has appointed a small unofficial committee of Members to assist him with their advice, and, in practice, the Librarian submits a list of suggested books to this committee and receives suggestions from it"
- (b) access is restricted to Members and Officers, and where, with regard to the use of the Parliament Library for the purpose of study by the outside public, Mr Speaker gives special permission when—
"satisfied that the required documents or books cannot be found elsewhere"
- (c) "two main divisions are observed
 - (i) Parliamentary and Official Publications, and
 - (ii) Works of more general interest, such as might assist Members of Parliament in discharge of their duties. Under this head, professed fiction, controversial divinity, natural science, and mental and moral philosophy have, generally speaking, always been excluded, as have all works of a highly partisan character on other subjects"
- (d) "the multiplication of published books and the diminution of vacant space have enforced on the Librarian the necessity of specializing in books connected with the work of the organ of government to which it is attached"; and
- (e) a staff of five (including messengers) assist the Librarian to serve 615 Members of a House which sits for long hours in a Session extending over three-quarters of the year

The Librarian, the specially appointed custodian of the collection and its protector, on the other hand, requires the support and assistance of Members at all times in the carrying out of the Rules for the administration of the Library. A scholarly man and scientifically trained librarian in this position can be invaluable to Members, of all parties, in connection with their work in Parliament.

Newspapers should not be kept in the Parliamentary Library but in charge of one of the messengers of the House specially appointed for that duty by the Black Rod and Serjeant-at-Arms respectively.

To a new Parliament, the selection of works to form the nucleus¹ of a Parliamentary Library is an investment of the greatest value. Upon this, a collection proper to a Statesmen's Reference Library can then be built up, which will prove of the greatest usefulness to Parliament and its individual Members in their legislative work.

¹ See JOURNAL, Vol I, pp 112-122

XII APPLICATIONS OF PRIVILEGE, 1936

COMPILED BY THE EDITOR

Westminster.

Newspaper Libel upon Members—On May 4,¹ in the House of Commons, the Member for the Moseley Division (Sir P Hannon) submitted the following motion.

That the statement embodied in the article written by the Hon Member for Clackmannan in the issue of *Forward*, dated the 2nd May, 1936, is a gross libel upon Hon Members of this House and a grave breach of its Privileges

and quoted the following extract from an article in such newspaper

"This year different Dull A vacant seat on Budget day is strange and significant. Many vacant seats on Tuesday It may have been that this lack of interest was due to the fact that the usually jealously guarded secrets of the Budget had already been divulged Somebody had spilled the beans, and Members who should have been listening to the Chancellor were busy elsewhere making a bit by turning their advance knowledge to advantage The fortunate folk in the know were in the City making easy money at Lloyds

The Member for Moseley Division then quoted the following references from May (13th Ed) .

Indignities offered to the character or proceedings of Parliament, by libellous reflections, have been punished as breaches of Privilege (p 85)

and:

Libels upon Members have also been constantly punished, but to constitute a breach of Privilege they must concern the character or conduct of Members in that capacity, and the libel must be based on matters arising in the actual transaction of the business of the House (p 91)

Mr Speaker ruled that a *prima facie* case had been made out for a breach of Privilege and put the question After which the Member for Clackmannan (Mr MacNiell Weir), who was responsible for the article, made an explanation and asked permission of Mr Speaker, unreservedly to withdraw the words casting the reflection and sincerely apologized Mr. Speaker then asked the Member for Clackmannan to leave the House while the matter was discussed, and he accordingly withdrew.

¹ 311 H C Deb 5 s 1349-1352.

Sir Austen Chamberlain said:

The Hon. Member for Clackmannan has made what he now recognizes as a grave and unjustified reflection upon Members of the House, but he has made a very handsome apology; he has withdrawn the offensive words, and I venture to suggest to the House that it will serve its own dignity, and show a proper appreciation of the apology of the Hon. Member, if it proceeds no further in the matter.

The Hon. Member for the Moseley Division then asked permission to withdraw the motion, which was allowed, and the motion was withdrawn.

Canadian Dominion Parliament.

House of Commons Employees —On February 13¹ the Leader of the Opposition (Rt. Hon. R. B. Bennett) on the Orders of the Day raised, as a matter of privilege, the question of dismissal of certain House of Commons employees belonging to the Sessional Staff. In his speech Mr. Bennett quoted sec. 21 of Chapter 145 of the Revised Statutes of Canada, 1927, namely:

If any complaint or representation is at any time made to the Speaker for the time being of the misconduct or unfitness of any clerk, officer, messenger or other person attendant on the House of Commons, the Speaker may cause an inquiry to be made into the conduct or fitness of such person.

If thereupon it appears to the Speaker that such person has been guilty of misconduct, or is unfit to hold his situation, the Speaker may, if such clerk, officer, messenger or other person has been appointed by the Crown, suspend him and report such suspension to the Governor-General, and, if he has not been appointed by the Crown, suspend or remove him.

The Prime Minister (Rt. Hon. W. L. Mackenzie King) in reply quoted the next section of the Statute above referred to, as follows:

22 (1) The Clerk of the House of Commons shall subscribe and take before the Speaker the oath of allegiance, and all other officers, clerks and messengers of the House of Commons shall subscribe and take before the Clerk of the House of Commons the oath of allegiance.

(2) The Clerk of the House of Commons shall keep a register of all such oaths.

and stated that he had asked the Clerk to have in the House this afternoon a record of the registration of oaths of persons included under sec. 22, and was advised that not a single one of these persons had been dismissed. The Prime Minister

¹ CCVII. Can. Com. Deb. 152-158 and 8-12.

suggested that when the Committee on Privileges had been appointed, the question as to the right and proper procedure to be adopted with respect to the retention or dismissal of employees of the House of Commons might be referred to such Committee

Union of South Africa Parliament.

Newspaper disclosure Appointment of Chairman of Select Committee—On February 20,¹ in the House of Assembly, complaint was made that *The Cape Argus* had disclosed certain proceedings in connection with the election of the Chairman of the Select Committee on Public Accounts before the proceedings of the Committee had been reported to or printed by the House

Mr Speaker agreed that under S O 239 a *prima facie* case for investigation had been established, but suggested that attention having been drawn to the matter, no further action need be taken if he emphasized the disadvantage at which some newspapers might be placed if the rule were disregarded by others

India Central Legislature.

Newspaper Republication of a Speech—In the India Legislative Assembly, on February 10,² the President (Hon Sir Abdur Rahim) drew attention to the following notice of motion by a Member (Sardar Sant Singh)

In view of the action of the Local Government in demanding security from the *Abhyudaya* of Allahabad for printing the full text of the speech of Pandit Krishna Kant Malaviya made in the Assembly on the 6th September, 1935, in Simla during the discussion on the Criminal Law Amendment Bill, the Assembly do proceed to discuss the question of the privilege of the freedom of speech and its publication in the Press enjoyed by the Members of the Assembly

The Member inquired whether this speech was published in the Press in this paper at the instance of the Member concerned who made the speech.

A lengthy debate³ took place on the subject, the President expressing himself willing to hear arguments from both sides, in order to see whether a *prima facie* case had been made out for a breach of privilege.

¹ VOTES, 1936, 184; 26 Deb 687-8

² I, India Leg Assem. Deb. No 6, 1

³ *Ib.*, 1-34

The production of a copy of the newspaper by a Member other than the Member in whose name the notice of motion stood, was allowed

The Leader of the House (Hon Sir Nripendra Siicar), amongst other objections, stated that the motion was not made at once but after notice, that the headlines in the translated publication of the speech in the *Abhyudaya* did not form part of the speech as delivered in the Chamber, that the paper had, as an inset, a poem, which was not in the original speech, that the speech in such paper was therefore more than a republication of the speech, that under Rule 12 taken with S O 23, no business other than Government business could be taken today except with the consent of the Governor-General; that under Rule 24A (1) the motion was out of order; and that this subordinate Legislature has no "privilege" like that enjoyed by Parliament, under ancient custom

At the conclusion of the debate, the President reserved his Ruling, which was given on the 27th *idem*,¹ to the following effect

The President quoted an Order of the Governor-in-Council (United Provinces) of January 10, 1936, issued under sec 7 (3) of the Indian Press (Emergency Powers) Act of 1931² requiring the publisher of the *Abhyudaya* of Allahabad to deposit security, because such paper had published an article containing words in contravention of sec 4 (1) (b) of such Act. The President cited the other methods by which the Hon Member (Sardar Sant Singh) had attempted to bring the subject-matter of the motion to the attention of the Assembly. The President ruled that a motion for adjournment under Rule 11 was not the proper procedure for raising a question of privilege pure and simple, and quoted Rulings of his predecessors in support

* * * * *

That a Resolution under S.O 59³ and Rule 23⁴ was clearly not an appropriate procedure for discussing a matter of breach of privilege, when the question was sought to be raised by a Non-Official Member. Further, by Rule 23, every resolution must be in the form of a specific recommendation to the Governor-General in Council.

¹ II, India Leg Assem Deb No 8, 1-4

² Act No XXIII of 1931

³ (Form and Contents of Resolutions)

⁴ (Procedure to be followed in debate upon urgency motions.)

The President held that a question of privilege such as was involved in the notice could be discussed on a motion under Rule 24A;¹ but that the Member had not conformed to such Rule, which barred such a motion as this, being neither a resolution under S O. 59 of the Manual of Business nor conforming to the requirements of Rule 24A. In any event, since questions of privilege were undoubtedly of considerable importance to the Assembly and were of an urgent nature, as stressed by the Leader of the House, and no provision had been made for business of this class in the Rules and Standing Orders, it might well be expected of the Government to find time for this purpose. That he was sure the House generally would recognize the importance of protecting the honour and privilege of the Legislature . . . and unless effective means were provided by which Members could be assured of being able to carry on their deliberations in the Chamber without interference and molestation and by which the dignity of the Legislature was duly protected from outside attacks, it could not be expected to function to the best advantage. The Assembly and the Government might perhaps consider whether the Rules and Standing Orders (especially Rules 24A and 6) should not be suitably amended, so that such difficulties as existed at present, and have been emphasized by the Honourable the Law Member, in the way of raising a question of privilege might be removed.²

Referring to the question as to whether a *prima facie* case of privilege had been made out in the present instance, the President quoted sec 67 (7)³ of the Government of India Act, and stated that the privilege enunciated there did not go further than exempt a Member of the Assembly from any proceedings in a Court of Law by reason of his speech or vote in the Chamber, or by reason of anything contained in any official report of the proceedings.

But having regard to the language of sec. 67 (7) above-mentioned, even a fair and faithful report of the whole debate, except in the official reports, was not protected

* * * * *

¹ (Limitation of time of discussion)

² (7) Subject to the rules and standing orders affecting the Chamber, there shall be freedom of speech in both Chambers of the Indian Legislature. No person shall be liable to any proceedings in any court by reason of his speech or vote in either Chamber or by reason of anything contained in any official report of the proceedings of either Chamber.

That if any action had been taken in any court against Pandit Krishna Kant Malaviya¹ for publishing his speech in the *Abhyudaya*, he could not plead privilege as a defence of such action

* * * * *

" I must further point out that the action of the United Provinces Government was taken under certain statutory powers vested in that Government and if privilege had been made out, that fact would have entailed interpretation of section 67 (7) side by side with the India Press (Emergency Powers) Act, before a decision could be arrived at whether there has been a breach of privilege or not "

No such powers as were enjoyed by the Lords and Commons in regard to privilege had been vested in India Legislatures under the Government of India Act, 1919, creating them and section 28 of the Government of India Act, 1935, forbade the enacting of any law conferring on the Federal Legislature punitive or disciplinary powers or the status of a court other than a power to remove or exclude persons infringing the Rules or Standing Orders or otherwise behaving in a disorderly manner

In conclusion, the President said.

" The same section, I may also mention, defines in sub-section (1) the freedom of speech in the Legislature in the same terms as section 67 (7) of the present Government of India Act, and by sub-section (2) it empowers the Federal Legislature to define the privileges of the Members of the Legislature and until that is done those privileges will be such as are enjoyed by the Members of the Indian Legislature at present. The extent of those privileges may be briefly indicated in general terms as being such as are necessary for the proper discharge of their duties by the Members in the Council Chamber. In addition to the President exercising such powers as have been conferred on him by the Rules and Standing Orders, the House itself, when a breach of privilege is made out, can always, upon a proper motion, express its condemnation and, in suitable cases, make such recommendation to the Governor-General in Council as it thinks fit "

The President concluded by stating that the motion for the reasons mentioned was disallowed

It may here be mentioned that, in consideration of any question of Indian Parliamentary procedure,² it must be borne in mind that such procedure is not only governed by the Indian Legislative Rules, but by the Standing Orders of the House and frequently by statute, both generally, and in regard to the particular powers of the Governor-General.

¹ The owner of the *Abhyudaya*.

² See also article by Mian Muhammad Rafi, Secretary of the Legislative Assembly, JOURNAL, Vol. IV, 61-76

XIII. SOME RULINGS BY THE SPEAKER AND HIS DEPUTY AT WESTMINSTER, 1936

COMPILED BY THE EDITOR

THE following Index to some points of Parliamentary Procedure as well as Rulings by the Speaker and Deputy-Speaker of the House of Commons given during the First Session of the Thirty-seventh Parliament of the United Kingdom of Great Britain and Northern Ireland and the Eleventh of His Majesty King George V, are taken from the General Index to Volumes 307 to 316 of the House of Commons Debates (Official Report), 5th series, comprising the period 26th November, 1935, to 30th October, 1936. The Rulings, etc., given during the remainder of 1936 and falling within the Second Session of the Thirty-seventh Parliament will be treated in Volume VI of the JOURNAL.

The respective volume and column reference number is given against each item, thus—" (283 - 945) " or " (284 - 607, 608 and 1160). " The items marked with an asterisk are indexed in the Commons *Hansard* only under the heading " Parliamentary Procedure "

Note.—1 R, 2 R, 3 R = Bills read First, Second or Third Time. *Amdt(s)* = Amendments *Com* = Committee *Cons* = Consideration. *Rep* = Report *CWH* = Committee of the Whole House. *Q* = Questions to Ministers *Sel Com.* = Select Committee *RA* = Royal Assent.

Adjournment.

- of debate,
 - Chair might consider motion for, if Member caught Speaker's eye (315 - 498)
 - Member only entitled to give reasons for motion to (315 - 920).
- of House,
 - legislation cannot be raised on motion for (310 - 571, 572), (312 - 682, 687, 688, 696, 698)
 - motion for, declined by Mr Deputy Speaker as an abuse of Rules of House (311 - 783, 784)
 - question could be raised on (315 - 244).
- of House (urgency),
 - motion allowed (314 - 39)
 - motion not allowed (312 - 1626, 1627), (313 - 997, 998).

Amendment(s).

- altering character of (311 – 1312).
 - consequential on Members first (310 – 1845, 1846)
 - in later line (308 – 1890)
 - out of order as charge would be imposed (313 – 2003)
 - out of order as contrary to decision of House (310 – 978).
 - which might create a charge (313 – 2005),
 - withdrawn (313 – 1868, 1869)
- See also Bills, and Lords' Amendments*

Bills, Private.

- effect of *amdt* which may create *opposed* business (315 – 1284)

Bills, Public.

- ballot for (308 – 64).
- clauses
 - cannot be withdrawn if Member speaks (313 – 330)
 - postponement of (313 – 161 to 163, 176 to 178)
- consolidating laws.
 - *—*amds* cannot be moved to Bills for, which would make an alteration in the law (314 – 1832)
 - *—practice to take clauses in Bills for, in blocks (314 – 1832).
- debate
- instructions } *See those Headings.*
- *—Private Members' Bills passed under 10-minute Rule in 2 consecutive Sessions, giving of facilities for 2 R discussion, not proposed, and reasons (312 – 1826)
- 2 R
 - subject matter of Bill (310 – 2311 to 2316)
- C W H
 - amdt*
 - cannot be proposed until clause read second time (313 – 2015), 2020
 - imposing a charge (313 – 2003).
 - in later line (308 – 1890)
 - to substitute new sub-section, not in order until old sub-section dealt with (313 – 2058).
- Cons.
 - amdt.*
 - interpretation of an (312 – 1886)
 - making charge on rates out of order (312 – 1878, 1879, 1902 to 1905).
 - manuscript, allowed on (311 – 1287).

Bills, Public.—*Cons.*—*amdt* (*continued*).

—no second speech on (313 - 2068)

—Recommittal, motion for (314 - 639, 640).

—3 *R.*—*amds* to question for, must be relevant to Bill (314 - 718)

—Member cannot move to report progress (314 - 1830)

—nothing unusual in Parliamentary Secretary moving (414 - 49)

—objection to, without notice (314 - 190, 191)

—preamble cannot be amended on (310 - 2742, 2743)

—Resolution, statutory *amds.* must be voted *en bloc* (307 - 1699)**Budget proposals.**

—alleged leakage, Tribunal of Inquiry, debate upon (311 - 1578, 1579), (313 - 427, 437, 438).

Business of the House.

—arrangement of, Mr Speaker not concerned in (313 - 641, 1213)

—Regulations are "exempted Business" when pursuant to an Act of Parliament (315 - 785)

—when "exempted" (313 - 1910, 1911).

Calling of House.

—before date fixed for resumption, motion for, and position if desired by Opposition (315 - 1889)

Chair.

—always gives protection to those who are doing right (314 - 611).

*—Member not entitled to criticize, and remark must be withdrawn (313 - 931)

—word "you" means (309 - 1480)

—*See also* Mr. Speaker and Chairman.**Chairman.**

*—decision, whether or not to put question rests with (313 - 170).

*—selection of *amds.* vested in, and explanation need not be given (313 - 756).**Closure.**

—can be moved at any hour (315 - 786).

*—reflection on, when carried, out of order (309 - 823, 824, 831)

Debate.

- adjournment motion.
- Minister only one speech, except by leave (313 - 519).
- only one speech in, on (313 - 521, 522)
- amds*
 - confined to (310 - 1655)
 - discussed together (310 - 1847, 1898)
- “ Another Place ”
 - exceptions to practice (314 - 507)
 - reference to proceedings in (314 - 505, 507)
 - speeches in, must not be quoted (309 - 1894)
 - statement of policy made in, may be referred to, but not criticisms of speeches or references to them with view to influencing debate (315 - 949)
 - statements made in, during same Session, not permissible (310 - 1171), (312 - 2266), (315 - 1009).
- anticipation of (308 - 1014)
- Bill(s)
 - 2 R
 - discussion on, of matter already decided (308 - 1194, 1241, 1270)
 - interruptions not allowed (308 - 1712, 1714)
 - merits or demerits of main Act, cannot be discussed on (307 - 1455)
 - Members may only speak once (310 - 1776)
 - Ministers also not entitled to speak more than once on (310 - 1771, 1777).
 - outside scope of Bill (308 - 1642).
- C.W.H.
 - discussion of series of *amds* together (313 - 2087).
 - 2 R debate not allowed in (312 - 46)
- Recommittal
 - clause only debatable on *amds*. thereto (314 - 1053, 1065).
 - restriction of debate (314 - 639, 640).
- Report
 - Bill referred to Standing Com., right of Member in charge of Bill or of Member having moved new clause or *amdt*, to address House second time (311 - 1292).
- Cons
 - Bill cannot be debated on (312 - 1944).
 - discussion of *amds* together (312 - 1919); (314 - 1099).
 - of manuscript *amds* permissible (311 - 1287)
 - on question for, restricted as on 3 R. (312 - 2108).

Debate.

—Bill(s) (*continued*):

—3 R.

—copious notes of Member (310 - 1749)

—debate must be limited to subject matter (309 - 1146),
(310 - 750), (311 - 2093)

—irrelevant (310 - 758, 760, 1919, 1954), (314 - 753, 754).

—Member cannot move to report progress (314 - 1830)

—Members must refer to things which are actually
in the Bill (311 - 2055)

*—on same day as Report stage (313 - 1180, 1181, 2107,
2111)

*—reasoned *amds* (314 - 718)

—Closure can be moved at any hour (315 - 786).

—Courts of Law, individual decision of, cannot be challenged
(309 - 1739, 1740).

—essence of (314 - 1329).

—Finance

—additional import duties, debate on several taken
together, but with freedom for individual vote (307 -
1249)

—Appropriate Bill, legislation cannot be discussed on
(315 - 1795, 1796, 1819)

—Bill, restriction of debate on (314 - 772, 785, 800, 824).

—Budget Resolution(s)

—discussion of several together (311 - 634)

—irrelevance (311 - 580).

—Consolidation Fund Bill, restriction of debate on
(310 - 1152, 1153)

—Resolution on *Rep.*, restriction of debate on (311 - 769,
774 to 777)

—Supply, *Com.* of.

—argument irrelevant to Estimates and Notice Paper
(310 - 333)

*—criticisms of cases in previous years not allowable
(314 - 1564, 1565)

*—discussion in (315 - 79)

*—matters requiring legislation cannot be discussed in
(312 - 636), etc.

—on *Rep.*

—debate must be confined to substance of Vote
(310 - 647, 669)

—legislation cannot be discussed (309 - 2474); (310 -
717).

Debate.

- Supply on *Rep.* (*continued*):
 - question of policy should be raised on Main Vote (309 – 400 to 402)
- Instruction, debate on motion for, to Committee (313 – 1516)
- interruptions (307 – 691, 692); (308 – 1712 to 1715); (309 – 1042), (311 – 2099), (314 – 1329); (315 – 295, 296, 492, 762)
- irrelevance in (310 – 1725, 2359)
- *—length of (310 – 2610)
- *—limitation of, position as to (310 – 1626, 1822)
- Lords, House of *See* “Another Place” and Lords’ Amendments
- Member(s) *See* that Heading
- motion(s)
 - debate on several of same nature taken together, and question in each put separately after general debate (310 – 1650)
 - irrelevant to (308 – 984), (314 – 119, 121, 122, 132, 133, 143).
- not way to conduct (314 – 1329, 1330)
- Parliamentary expressions.
 - allowed*
 - “a sober man would not have made that statement,” treated with the contempt it deserves (315 – 587).
 - “playing the fool” not necessarily “unparliamentary” (315 – 364)
 - “tripe,” expression inelegant, but exception cannot be taken (314 – 1070)
 - not allowed*
 - “humbug” (313 – 2157)
 - “if the hyena opposite would give his attention” (310 – 923)
 - “liar,” “damned liar” (315 – 834, 837)
 - “lie” (315 – 836), (313 – 2157)
 - Member must not accuse another Member of making deliberate and conscious false statement (313 – 2156)
 - *—“organized obstruction” (309 – 923).
 - *—remarks quite out of order (307 – 1177)
 - “some unprincipled blackguards” (312 – 1995)
 - “swine,” as referring to a Member (313 – 437, 438)
 - “when a Minister . . . he is lying” (315 – 836, 837).

Debate (*continued*)

- personalities should be avoided (315 - 745, 761)
- “ point of ” (309 - 552)
- printed speeches, reading of (312 - 2454)
- *—Provincial Police, conduct of, cannot be discussed in the House (314 - 1553 to 1559, 1566 to 1568)
- Questions asked in debate, limit to (310 - 1778)
- reading of speeches (307 - 385, 386).
- repetition (315 - 494)
- reply not allowed on Order of the Day, unless *unopposed* (310 - 1763, 1764)
- Royal Family, improper references to, by Member (307 - 239, 240)
- speeches
 - *—reading of (307 - 385, 386)
 - time taken in, by other than back-benchers (310 - 2610)
- *—statement at end of (312 - 812, 838, 846).

Eleven o'clock Rule.

- suspension of (309 - 1577, 1578).

Estimates. *See* Finance**Finance.**

- Budget Resolutions put separately (311 - 634)
- debate. *See* that Heading
- *—Estimates, Supplementary (309 - 329, 330), etc.
- Financial Resolutions.
 - *—drafting of (312 - 381, 382)
 - *—practice first to debate generally upon, *amds* called at later stage (312 - 1029)
- Import Duties Orders.
 - *—discussion of, together, but voting upon separately (308 - 907).
 - *—taking of (308 - 861).
- “ State maintenance ” and “ Government grants ” (308 - 984).
- Supply, *Com.* of.
 - amdt*, motion for, importance of word “ that ” (310 - 2090, 2091, 2129, 2140 to 2144, 2146, 2149 to 2152, 2453, 2454)
 - motion for (310 - 2441).
 - Order of Day, ballot for *amdt.* (310 - 2141)

Instructions. *See* Debate

Lords, House of. *See* Debate ("Another Place") and Lords Amendments.

Lords Amendment(s).

- "Another Place" *See* Debate.
- debate upon several drafting, dealt with together, but put separately (312 - 2371).
- "privilege"¹
 - does not necessarily mean an increased charge (315 - 1005)
 - raised (315 - 948, 1001 to 1004, 1006, 1012).
 - special entry ordered (315 - 1678); (312 - 2151), (315 - 1013).

Member(s).

- can only speak by leave of House (309 - 1513), (314 - 550)
- cannot:
 - be on his feet when occupant of the Chair is standing (312 - 694)
- *—in Consolidating Bills discuss any alteration in law on question for clause standing part of Bill (314 - 1832).
- interrupt unless Member in possession gives way (307 - 245); (308 - 175)
- speak after motion proposed from Chair (314 - 1830).
- count of (310 - 2230).
- copious notes of (310 - 1749)
- debate. *See* that Heading
- has already spoken (313 - 521, 522, 2039).
- has exhausted right to speak (307 - 1184); (310 - 2299); (312 - 290); (313 - 2068)
- in possession of House.
 - (312 - 693), (308 - 175); (308 - 1714, 1715); (307 - 245).
 - gives way to whom he chooses² (315 - 307, 308).
- latitude allowed a, in maiden speech (308 - 1834)
- maiden speech, customary not to call a, to order (315 - 652)

¹ *See*, "monetary"

² "It is generally the rule of this House that when a very old Member of the House gets up, even if a Minister feels that he ought not to give way, he does so" (Minister of Labour [315 H.C. Deb. 5 s. 308]).

Member(s) (*continued*)

- may approach Government Officials “ under the Gallery ” for information (309 – 2507)
- must
 - address Chair (309 – 552, 1276, 1480, 1492), etc
 - not make a question, during debate, into a speech (309 – 1084)
 - resume seat when Speaker rises (312 – 707)
 - wait until there is a question before the House (308 – 897)
- “ named ” (315 – 837, 842, 843)
- *—no rule of House as to, sitting in any particular place (313 – 1202 to 1204)
- *—not entitled to criticize Chair, and remark must be withdrawn (313 – 931)
- not to read his speech (307 – 385, 386)
- *—objection to a, attempting to rise to point of order, merely to make point in debate (312 – 132)
- only entitled to speak once, except in *Com* (310 – 1771, 1778).
- personally attacked, not to be interrupted (310 – 2361)
- *—printed speeches, reading of, by (312 – 2454)
- *—Private Members’ Bills passed under 10 min Rule in two consecutive Sessions, giving of facilities for 2 R. discussion, not proposed, and reasons (312 – 1826).
- privilege of, old Rule of House in regard to (313 – 209)
- reading of speeches (307 – 385, 386)
- selection of speakers (307 – 301, 302)
- *—should not raise point of Order on which Ruling already given (314 – 2190)
- *—should wait for Chairman to call for Order (315 – 74)
- speaking on Bill, who would derive advantage therefrom (308 – 657, 658)
- suspended for obstruction (315 – 842, 845, 846).
- two
 - cannot be on their feet at the same time (515 – 593).
 - trying to speak at once (311 – 1374).
- who has been personally attacked and wishes to reply, should not be interrupted (310 – 2361)

Minister.

- absence of (315 – 1317).
- reply only with leave of the House (310 – 1763, 1764).

Motion(s).

- mover of, right of reply (309 - 418 to 422)
- See also* Debate.

Order.

- *—Member should wait for Chairman to call for (315 - 74).
 - not a point of (307 - 197, 245), (314 - 224), (308 - 175); (309 - 1435), (313 - 206, 208); (316 - 128), etc.
 - not a point of, but a point of debate (309 - 552)
- *—objection to Member attempting to rise to, in order merely to make a point in debate (312 - 132)
 - point of, must be addressed to Speaker (308 - 175)
 - Police in lobby, reference to, on suspension of Member (315 - 841)
 - rising to interject an argument, not a point of (307 - 245)
 - sitting suspended owing to grave disorder (315 - 838)

Perth Corporation Order Confirmation Bill.

- Same procedure as on *Rep* of an ordinary Bill (309 - 1511, 1512)

Police—in Lobby, reference to (315 - 841).

Privilege.¹

- complaint of, concerning number of Under-Secretaries of State. *See* Editorial, p. 19 hereof
- newspaper libel on Members *See* Article XII hereof.

Questions to Ministers.

- *—a wider *Q* (312 - 1834); (314 - 1366)
- *—already answered in reply to another *Q*. (307 - 1761, 1762).
 - answer that information desired as to purpose behind *Q* (314 - 2053)
 - automatically wiped off Order Paper can be put down again (315 - 1090)
 - Business of the House, upon, must come before Motion for Adjournment (313 - 998)
- *—cannot be answered (307 - 290)
 - consideration of all rash assertions not possible (313 - 638).
 - correspondence with Post Office instead of *Q*, matter for Member and not for Speaker (310 - 2406).
 - debate,
 - developing (307 - 900), (316 - 31)
 - not allowable (312 - 370), (313 - 1148); (314 - 1191).
 - on every question not possible (311 - 1507).

¹ *i.e.*, non-monetary

Questions to Ministers (*continued*).

- delegation of, to another Minister to answer (313 - 1428, 1429).
- discretion of Mr. Speaker as to allowing (309 - 43, 44)
- extra 10 minutes for, in consequence of Black Rod intervening, not allowed (310 - 2948)
- facts and not what Ministers think desired at *Q* Time (314 - 1860)
- forthcoming debate on subject (313 - 1167).
- handed in, but not on Order Paper (308 - 1380)
- House not concerned with newspaper correspondents (314 - 2025)
- hypothetical (310 - 2425), (311 - 1500), (314 - 11, 2232).
- information being given, instead of being asked for (314 - 611).
- large number on Paper (307 - 1934), (310 - 2121, 2127), (312 - 1815); (313 - 1149), (315 - 1508)
- lot more on Order Paper (315 - 1306, 1696)
- matter cannot be further gone into (311 - 731).
- matter cannot be pursued indefinitely (314 - 228)
- Member.
 - cannot be helped to obtain more satisfactory answer (312 - 809)
 - has already put three, (315 - 1090)
 - had better put down *Q* again (309 - 39)
 - not entitled to ask for any opinion from Ministers at *Q* Time (309 - 1163).
 - not seen when asking *Q*, without rising in seat (312 - 1174)
 - responsible for statements in (310 - 2402); (314 - 848)
- Minister's opinion on subject, hearing of, not desired (311 - 296)
- must be asked instead of making statement (307 - 896)
- next *Q*. (308 - 739), etc
- notice not received (314 - 29).
- *—notice required and *Q* should be put down (307 - 266), etc.
- number
 - done in three-quarters of an hour (311 - 1517)
 - of *Q*. on Paper should be considered (314 - 2206).
 - of, on Paper (315 - 434)
- *—on subject, answered several times (312 - 978)
- on uncorroborated evidence, rules adequate to deal with matter (312 - 1202)
- opinion, matter of (310 - 1393).

Questions to Ministers (*continued*).

- *—oral, limitation of number asked for by any Member in one week by arrangement made by Mr Speaker in 1920 and position as to alteration (312 - 1629)
- passed (315 - 425)
- point of Order *re*, no complaint *re* (312 - 1836)
- postponement (315 - 1090).
- Press statements, *Q* cannot be asked as to accuracy of (308 - 1762)
- private notice (308 - 1613, 1977, 1978); (309 - 43, 44).
- private notice, *Q* already answered in reply to another *Q* (307 - 1761, 1762)
- rather wide subject opened up by (315 - 243)
- should be put down (310 - 1041, 2127); (312 - 1801, 2173); (314 - 611).
- Supplementary,
 - a different *Q* (311 - 1703); (313 - 979), (315 - 443).
 - adjective would not have been allowed if *Q*. had been submitted (307 - 1381).
 - another *Q*. (310 - 2589), (313 - 976)
 - beyond *Q* on Paper (308 - 52)
 - cannot be asked in form in which they would not be accepted as Questions to be put on Paper (312 - 813).
 - different point raised (314 - 592)
 - ground covered by other Questions (310 - 1232).
 - information required cannot be given in answer to (308 - 1587).
 - large number on subject (315 - 1514).
 - Member may not ask Questions arising out of (311 - 310).
 - must be concluded (314 - 228).
 - no connection with Original (345 - 425).
 - not arising (308 - 1580, 1582); (310 - 1060, 1220, 1794), (312 - 359, 1184), (315 - 1499); (316 - 33)
 - not related to *Q*. on Paper (307 - 1383).
 - nothing to do with original (310 - 2425).
- *—not *Q* on Paper (308 - 569); (312 - 472).
- *—not the *Q* (311 - 1673)
 - number of, on point (314 - 2208).
 - Q*. on Paper (314 - 378)
 - reading of (313 - 995); (314 - 610)
 - separate *Q* (309 - 1364)
 - several, and Questions on the Paper must be got on with (314 - 1015).

Questions to Ministers.

—Supplementary (*continued*).

—to Foreign Secretary, better put on Paper (312 - 1175, 1176)

*—too far from *Q* on Paper (312 - 543)

—too long (307 - 1551)

—too much time taken up by (313 - 1149)

*—very long (310 - 2132)

—removal from Order Paper (315 - 1509)

—replies

—containing number of figures (311 - 1859, 1860)

—given (309-1534); (311-1858); (312-362), (315-1522)

—given to *Q* on Paper (307-736), (314-391)

—House only entitled to get the answers it does get (309-2281) with (309-1582, 1583)

*—not the way to treat (313-1405).

—that information desired as to purpose behind *Q*. (314 - 2053)

—will be received if Rt Hon Gentleman given a chance (314-226).

—rights of Ministers in connection with (313-1405)

—same as put by Leader of Opposition on previous day (313-619)

*—theoretical (708-751)

—transfer from one Minister to another (312-2389, 315-242)

*—unintelligible *Q*. a reflection on everybody (310-219)

*—upon Business of House must come before motion for adjournment (313-988)

—when ruled out of order, the end of it (315-424)

—wide subject opened up by (315-243).

Royal Family.

—references to conduct of (307-239, 240).

Sitting Suspended.

—for 15 minutes owing to grave disorder (315-838).

Speaker, Mr.

—*amdt(s)*

—acceptance of (311-507).

—could not be called (311-1319)

—not selected (311-817); (314-1113).

Speaker, Mr.*amdt(s) (continued).*

- selection of, by (310 - 907, 908, 913, 957), (311 - 1247); (314 - 305, 444).
- selection of, by, *amdt* withdrawn on assurance that later *amdt* will be called (313 - 2151, 2152)
- giving matters of opinion not business of Chair (307 - 1458).
- latitude allowed in debate on certain *amdt*, by Deputy-Speaker, with concurrence of (310 - 2199)
- must not be accused of inviting Members to be out of order (314 - 785)
- no control over speakers, “ the only control I have is in regard to catching the Speaker’s eye ” (315 - 669).
- reflection on conduct of, cannot be allowed (315 - 590).
- says—“ *one of the most priceless possessions of this House is its reputation for fair play and I hope we shall do nothing to destroy it* ” (315 - 595)
- selection of speakers (307 - 301, 302)

Supply. See Finance, *also* Debate.

XIV. LIBRARY OF PARLIAMENT

BY THE EDITOR

VOL. I of the JOURNAL contained¹ a list of books suggested as the nucleus of a Statesmen's Reference Collection in the Library of an Oversea Parliament. Volumes II,² III³ and IV⁴ gave lists of books on economic, legal, political and sociological questions of major importance, published during the respective years, and below is given a list of works on such subjects published last year. Biographies, historical works, and books of travel and fiction, as well as books on subjects of more individual application to any particular country of the British Empire, are not included in these lists, it being considered unnecessary, in any case, to suggest to the Librarian of each Parliament books on any such subjects.

A good library available to Members of Both Houses of Parliament during Session, and by a system of postal delivery (with the exception of standard works of reference), also during Recess, is a great asset. The Library is usually placed in charge of a qualified Librarian, and in most of the Oversea Parliaments is administered by a Joint Committee of Both Houses under certain Rules.⁵ The main objective should be to confine the Library to good material, shelves soon get filled, and there are usually Public Libraries accessible where lighter literature can be obtained. By a system of mutual exchange, the Statutes, Journals and *Hansards* of the other Parliaments in the Empire can easily be procured. Such records are of great value in obtaining information in regard to the framing and operation of legislation in other parts of the Empire, as well as looking up the full particulars in connection with any question of procedure referred to in the JOURNAL.

Agar, Herbert —What is America? (Eyre and Spottiswoode 12s. 6d.)

Baker, Philip Noel —The Private Manufacture of Armaments. Vol. I (Gollancz 18s.)

Baker, Ray Stannard. —Woodrow Wilson Vol. V. (Heinemann. 15s.)

Beaglehole, J. C. —New Zealand A Short History (Allen and Unwin 3s. 6d.)

Bone, William A., and Himus, G. W. —Coal Its Constitution and Uses (Longmans 25s.)

Buxton, Charles Roden. —The Alternative to War (Allen and Unwin. 4s. 6d.)

¹ P. 112 *et seq.*

⁴ P. 148 *et seq.*

² P. 132 *et seq.*

⁵ See Article XI *hereof*

³ P. 127 *et seq.*

- The Cambridge History of the British Empire Vol. VIII, South Africa, Rhodesia and the Protectorates Editors *A P. Newton and E A Bemans, S A Adviser Eric A Walker* (Cambridge University Press 42s)
- Canadian Research Committee of the League for Social Reconstruction* Social Planning for Canada (Nelson 18s)
- Cassel, Gustav*—The Downfall of the Gold Standard (Milford. 6s)
- Chamberlain, Joseph P*—Legislative Processes (Appleton-Century 16s)
- Coatman, J*—Magna Britannia (Cape 10s 6d)
- Damels, G W and Campion, H*—The Distribution of National Capital. (Manchester University Press 3s 6d)
- De Trax, Robert (Tr)*—The Spirit of Geneva (Milford 6s)
- Dodwell, H H*—India Part I to 1857 Part II, 1858-1936. (Arrowsmith 3s 6d each)
- Duff, Douglas*—Palestine Picture (Hodder and Stoughton 12s 6d)
- Duncan, W G K (Ed)*—Trends in Australian Politics (Angus and Robertson 5s)
- Dunnage, J A*—Transport and the Public (Routledge 6s)
- Dutt, R Palme*—World Politics 1918-1936 (Gollancz 7s 6d)
- Ellis, Havelock*—Studies in the Psychology of Sex. 4 vols (John Lane 84s)
- Einzig, Paul*—The Exchange Clearing System. (Macmillan 8s 6d)
—Monetary Reform in Theory and Practice (Kegan Paul 12s 6d)
- Fletcher, Basil A*—Education and Colonial Development. (Methuen. 5s)
- Foster, Henry A*—The Making of Modern Iraq A Production of World Forces. (Williams and Norgate 15s)
- Gangulee, N*—The Making of Federal India (Nisbet 12s. 6d)
- Garrigues, Charles Harris*—You're Paying for it! A Guide to Graft. (Funk and Wagnalls Co 10s 6d)
- Gibbons, John*—Abroad in Ireland (Muller 7s 6d)
- Goblet, Y M (Tr)*—The Twilight of Treaties (G Bell 7s 6d)
- Gunther, John*—Inside Europe (Hamish Hamilton 12s 6d)
- Gutierrez, Dr Viriato*—The World Sugar Problem. (Norman Rodger 6s)
- Hall, Sir A Daniel*—The Improvement of Native Agriculture in Relation to Population and Public Health (Milford. 10s 6d)
- Hoffmann, Walter Gailey*—Pacific Relations The Races and Natives of the Pacific Area and their Problems. (McGraw Hill. 7s 6d)
- Howard, Louise E*—Labour in Agriculture (Milford 18s)
- Hughes, W. M*—Australia and War To-day. (Australian Book Co 6s)
- Jerrold, Douglas*—They that take the Sword (John Lane. 6s)
- Kahn, Dorothy Ruth*—Spring up, O Well. (Cape. 10s 6d)
- Keith, A Berrisdale*—See p 222

- Keynes, John Maynard*—The General Theory of Employment, Interest and Money (Macmillan. 5s)
- Knight, Frank Heyneman*—The Ethics of Competition and Other Essays (Allen and Unwin 12s 6d)
- Knowles, L C A and C M*—The Economic Development of the British Overseas Empire Vol III The Union of South Africa. (Routledge 10s 6d)
- League of Nations*, Bulletin of League of Nations Teaching No 2. December, 1935* (Allen and Unwin 2s 6d)
—The Migration of Workers (International Labour Office No 5) (P S King 6s 6d.)
- Lee, H W*—(Part I) {Social Democracy in Britain. (Social Archbold, E—(Part II) {Democratic Federation) (7s 6d)
- Leftwich, Joseph*.—What will happen to the Jews? (P S. King. 7s 6d)
- Leugyel, Emil*—Millions of Dictators (Cassell. 7s 6d)
- Machray, Robert*—The Poland of Pilsudski (Allen and Unwin 15s)
- MacInnes, C M*—An Introduction to the Economic History of the British Empire (Rimingtons 7s. 6d)
- MacMunn, Lt-Gen Sir George*—The Indian States and Princes. (Jarrolds 18s)
- Maur, L P*—Native Policies in Africa (Routledge 12s. 6d.)
- Marshall-Cornwall, Major-Gen J H*—Geographic Disarmament (Milford 12s 6d)
- Mills, John*—A Fugue in Cycles and Bels. (Chapman and Hall 13s 6d)
- Moreland, W H, and Chatterjee, Atul Chandra*—A Short History of India (Longmans 12s 6d)
- Morrow, Ian F S, and Sieveking, L M*—The Peace Settlement in the German-Polish Borderlands (Milford 25s.)
- Mowat, R B*—Europe in Crisis The Political Drama in Western Europe. (Arrowsmith 3s 6d)
- Mowat, R B, and Others*—Problems of Peace. Anarchy or World Order. (Allen and Unwin 7s 6d)
- Newsholme, Sir Arthur*—The Last Thirty Years in Public Health. (Allen and Unwin 15s)
- Notestein, Wallace, and Others*.—Commons Debates, 1621. (7 vols.) (Milford. 147s)
- Radford, Arthur*—Patterns of Economic Activity (Routledge 12s 6d)
- Reynolds, Lloyd G*—The British Immigrant His Social and Economic Adjustment in Canada (Milford. 12s 6d)
- Richardson, J Henry*—British Economic Foreign Policy. (Allen and Unwin. 10s 6d.)
- Roberts, Harry*—Euthanasia and Other Aspects of Life and Death (Constable 7s. 6d.)
- Roe, F. Percy*—How is the Empire? (Pitman. 6s.)
- Rowan-Robinson, General H*—Sanctions begone! A Plea and a Plan for the Reform of the League (William Clowes 7s. 6d)
- Russell, Bertrand*.—Which way to Peace? (Michael Joseph. 7s 6d.)

- Sharp, Henry A* —Libraries and Librarianship in America (Grafton 7s 6d.)
- Shepardson, Whitney H, and Scroggs, William O* —The United States in World Affairs. An Account of American Foreign Relations 1934-35 (Harpers 12s 6d)
- Slocumbe, George* —The Dangerous Sea The Mediterranean and Its Future (Hutchinson. 10s 6d)
- Smith, T V* —The Promise of American Politics. (Cambridge University Press 11s 6d)
- Steed, Henry Wickham* —Vital Peace—A Study of Risks (Constable 10s)
- Stimson, Henry L.* —The Far Eastern Crisis. (Harpers London Royal Institute of International Affairs 15s)
- Stuart, E* —Modern Translation (Milford. 6s)
- Thomas, H B, and Scott, R* —Uganda (Milford 15s)
- Thurnwald, Richard C.* —Black and White in East Africa (Routledge. 21s)
- Toynbee, Arnold J* —Survey of International Affairs 1934. (Milford. 28s.)
- Usborne, Vice-Admiral C V* —The Conquest of Morocco (Stanley Paul 18s)
- Utley, Freda* —Japan's Feet of Clay. (Faber and Faber 15s)
- Wedgwood, Col the Rt Hon J. C, and Holt, Anne D* —History of Parliament Biographies of Members of the Commons House 1439-1509 (H M S O 40s)
- Westermarck, Edward* —The Future of Marriage in Western Civilization (Macmillan 12s 6d)
- Wickwar, W Hardy, and Wickwar, K Margaret* —The Social Services A Historical Survey (Cobden-Sanderson 10s 6d)
- Williamson, J A* —The British Empire and Commonwealth. (Macmillan 6s)
- Wilson, Francis Graham* —The Elements of Modern Politics. (McGraw-Hill 24s)
- Zimmern, Alfred* —The League of Nations and the Rule of Law, 1918-1935. (Macmillan 12s 6d)

XV. LIBRARY OF "THE CLERK OF THE HOUSE"

BY THE EDITOR

THE Clerk of either House of Parliament, as the "Permanent Head of his Department" and the technical adviser to successive Presidents, Speakers, Chairmen of Committees and Members of Parliament generally, naturally requires an easy and rapid access to those books and records more closely connected with his work. Some of his works of reference, such as a complete set of the Journals of the Lords and Commons, the Reports of the Debates and the Statutes of the Imperial Parliament, are usually more conveniently situated in a central Library of Parliament. The same applies also to many other works of more historical Parliamentary interest. Volume I of the JOURNAL contained¹ a list of books suggested as the nucleus of the Library of the "Clerk of a House," including books of more particular usefulness to him in the course of his work and which could also be available during Recess, when he usually has leisure to conduct research into such problems in Parliamentary practice as have actually arisen or occurred to him during Session, or which are likely to present themselves for decision in the future.

Volumes II,² III³ and IV⁴ gave lists of works published during the respective years. Below is given a list of books for such a Library, published last year.

- Chalmers, Dalzell, and Hon Cyril Asquith*.—Outlines of Constitutional Law 5th Ed (Sweet and Maxwell 15s)
Evatt, Mr Justice Herbert Vere.—The King and His Dominion Governors (Milford 15s)
Keith, A Berriedale.—Letters and Essays on Current Imperial and International Problems 1935-36 (Milford 8s 6d)
 —The King and the Imperial Crown (Longmans 21s.)
 —A Constitutional History of India 1600-1935. (Methuen. 15s)
 —The Governments of the British Empire (Macmillan 21s)
Mansergh, Nicholas.—The Government of Northern Ireland (Allen and Unwin 12s 6d)
Rao, R Shiva (Ed).—Select Constitutions of the World (Heffer 15s)
Terry, William H.—The Life and Times of John Lord Finch (Simpkin Marshall 18s)
Wynes, W. A.—Legislative and Executive Powers in Australia (Law Book Company of Australia, Sidney, N S.W 32s 6d)

¹ P 123 *et seq*

³ P 133.

² P 137 *et seq*

⁴ P 152 *et seq*.

Volume II¹ gave a list of works on Canadian constitutional subjects and Volume III,² a similar list in regard to the Commonwealth Constitution. Below is given a list of such works in regard to the Constitution of the Union of South Africa, recommended to readers of this JOURNAL wishing to study the Union Constitution.

Brand, Hon R H—The Union of South Africa (Oxford Clarendon Press, 1909)

Closer Union Society (Issued by) —

—The Framework of Union 1908 (Cape Times Ltd., Cape Town)

—The Government of South Africa 1908 (Central News Agency Ltd, Cape Town)

Eybers, G W—Select Constitutional Documents illustrating South African History, 1795-1910 1918 (Routledge)

Great Britain—Imperial Parliamentary Papers *re* Federation of South African Colonies, etc (Cmd 3564, 1907, Cmd 4525, 1909; Cmd 4721, 1909) (London, H M S O)

Hofmeyr, Hon J H—South Africa 1931 (E Benn, Ltd)

Kennedy, W P M, and H J Schlosberg—The Law and Custom of the South African Constitution. London, 1935 (Oxford University Press)

Nathan, M—The South African Commonwealth 1919 (Specialty Press of S A, Ltd, Johannesburg)

Newton, A P—The Unification of South Africa. 2 vols 1924 (Longmans, Green)

Selborne, Earl of, and Others.—Memorandum prepared by the Parliamentary Committee for Studying the Position of the S A Protectorates London, 1934 Supplement to *Journal of African Society*, Vol 33, No 133, August, 1934

Selborne, Earl of—The Selborne Memorandum Review of Mutual Relations of British South African Colonies in 1907 London, 1925 (Milford)

South African National Convention—Minutes of Proceedings of the S.A National Convention held at Durban, Cape Town and Bloemfontein, October, 1908, to May, 1909 Cape Town, 1911. (Cape Times Ltd)

South Africa Act—The South Africa Act, 1909 (9 Ed 7, ch 9) "An Act to constitute the Union of South Africa" London, 1909 (H M S O and Govt Printer, Pretoria)

Walton, Sir Edgar—The Inner History of the National Convention of South Africa 1912 (T. M Miller, Cape Town)

Worsfold, W B—The Problem of South African Unity. 1900 (G. Allen)

¹ P 138.

² P 153

XVI RULES AND LIST OF MEMBERS

The Society of Clerks-at-the-Table in Empire Parliaments.

Name.—1. That a Society be formed, called “The Society of Clerks-at-the-Table in Empire Parliaments.”

Membership.—2. That any Parliamentary Official having duties at the Table of any Legislature of the British Empire as the Clerk, or a Clerk-Assistant, or any such Officer retired, be eligible for membership of the Society upon payment of the annual subscription.

Objects.—3. That the objects of the Society be:

(a) to provide a means by which the Parliamentary practice of the various Legislative Chambers of the British Empire be made more accessible to those having recourse to the subject in the exercise of their professional duties as Clerks-at-the-Table in any such Chamber;

(b) to foster a mutual interest in the duties, rights and privileges of Officers of Parliament;

(c) to publish annually a JOURNAL containing articles (supplied by or through the “Clerk of the House” of any such Legislature to the Editor) upon questions of Parliamentary procedure, privilege and constitutional law in its relation to Parliament;

(d) it shall not, however, be an object of the Society, either through its JOURNAL or otherwise, to lay down any particular principle of Parliamentary procedure or constitutional law for general application; but rather to give, in the JOURNAL, information upon those subjects, which any Member, in his own particular part of the Empire, may make use of, or not, as he may think fit.

Subscription.—4. That the annual subscription of each Member be £1 (payable in advance)

List of Members.—5. That a list of Members (with official designation and address) be published in each issue of the JOURNAL

Officers.—6. That two Members be appointed each year as Joint Presidents of the Society who shall hold office for one year from the date of publication of the annual issue of the JOURNAL, and that the Clerk of the House of Lords and the Clerk of the House of Commons be invited to hold these offices for the first year, of the Senate and House of Commons of the Dominion of

Canada for the second year, the Senate and House of Representatives of the Commonwealth of Australia the next year, and thereafter those of New Zealand, the Union of South Africa, Irish Free State, Newfoundland and so on, until the Clerk of the House of every Legislature of the Empire who is Member of the Society has held office, when the procedure will be repeated.

Records of Service.—7 That in order better to acquaint the Members with one another and in view of the difficulty in calling a meeting of the Society on account of the great distances which separate Members, there be published in the JOURNAL from time to time, as space permits, a short biographical record (on the lines of a Who's Who) of every Member.

Journal.—8. That two copies of every publication of the JOURNAL be issued free to each Member. The cost of any additional copies supplied him or any other person to be at 20s a copy, post free.

Honorary Secretary-Treasurer and Editor.—9. That the work of Secretary-Treasurer and Editor be honorary and that the office may be held either by an Officer or retired Officer of Parliament, being a Member of the Society

Accounts.—10 Authority is hereby given the Honorary Secretary-Treasurer and Editor to open a banking account in the name of the Society and to operate upon it, under his signature, a statement of account, duly audited, and countersigned by the Clerks of the Two Houses of Parliament in that part of the Empire in which the JOURNAL is prepared, being published in each annual issue of the JOURNAL. (*Amended 1936*)

LONDON,
9th April, 1932.

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Mian Muhammad Rafi, * B A, Secretary of the Legislative Assembly, New Delhi.

Diwan Bahadur R. V. Krishna Ayyar, * B A, M L., Secretary to the Legislature (both Chambers), Senate House, Chepauk, Madras.

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- G. S. K. Hydrie, Esq.,* B.A., LL.B., Secretary of the Legislative Assembly, Lucknow, United Provinces.
- Sardar Abnasha Singh,* Secretary of the Legislative Assembly, Lahore, the Punjab.
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Ex Clerks-at-the-Table.

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J. G. Jearey, Esq., O.B.E. (Southern Rhodesia).

Office of the Society.

c/o The Senate, Houses of Parliament, Cape Town, South Africa.

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Honorary Secretary-Treasurer and Editor : E. M. O. Clough.

* Barrister-at-law or Advocate.

XVII. MEMBERS' RECORDS OF SERVICE

Note.—*b.* = born; *ed* = educated, *m.* = married; *s* = son(s);
d = daughter(s); *c.* = children

Members who have not sent in their Records of Service are invited to do so, thereby giving other Members the opportunity of knowing something about them. It is not proposed to repeat these records in subsequent issues of the JOURNAL, except upon promotion, transfer or retirement, when it is requested that an amended record be sent in.

The Society has recently enrolled a number of new Members, Secretaries of Legislative Chambers in the Indian Provinces, but there has not been time to obtain their records of service for inclusion in this Volume

Hamid, Sheikh Abdul, B.A., LL.B.—Secretary to the Legislative Assembly, N W F P.; *b* at Peshawar, November 29, 1902; *ed.* at Government High School, Peshawar; graduated from the Edwardes College, Peshawar, in 1922, stood first in the Punjab University in Philosophy Pass and Honours and was awarded University Scholarship of merit, passed LL B examination of the Punjab University and stood first in the University in both the Law examinations and was awarded two Gold Medals for the same one each year; joined the N W F P Civil Service in 1925 through competitive examination; was awarded State Scholarship for studies in England in 1925 of which he did not avail himself, Secretary, N W F P Legislative Council from 1932 until the creation of the new Legislative Assembly

Krishna R. V., Diwan Bahadur, Ayyar, B.A., M.L.—Secretary to the Madras Legislature, 1937; *b* August, 1884. Entered the service July 18, 1910; Master of Laws of the Madras University; practised at the Bar; Member of the Madras Judicial Service from July 18, 1910-July 22, 1921; Assistant-Secretary to Government in the Law Dept, July 23, 1921-January 5, 1924; Secretary to the Madras Legislative Council, January 6, 1924-April, 1937; was Legal Adviser to the Indian Taxation Enquiry Committee, nominated Official Member of the Indian Legislative Assembly, August, 1935-December, 1936; was conferred the title of "Rao Bahadur," June 3, 1924, and "Diwan Bahadur," June 3, 1933

Williams, I.C.S., the Hon. Mr. A. de C.—Additional Joint Secretary to the Government of India, Legislative Department, and Secretary of the Council of State; *b.* 27th September, 1890, joined the Indian Civil Service, 29th March, 1915.

XVIII. STATEMENT OF ACCOUNT AND AUDITOR'S REPORT, 1935-1936

I REPORT that I have audited the Statement of Account of "The Society of Clerks-at-the-Table in Empire Parliaments" in respect of Volume IV.

The Statement of Account covers a period from 23rd April, 1936, to 31st March, 1937. All the amounts received during the period have been banked with the Standard Bank of South Africa, Limited

Receipts were duly produced for all payments for which such were obtainable, including remuneration to persons for typing and clerical assistance and roneoing, and postages were recorded in the fullest detail in the Petty Cash Book

I have checked the Cash Book with the Standard Bank Pass Book in detail and have obtained a certificate verifying the balance at the Bank.

The Petty Cash Book has been checked to the Cash Account for amounts paid to the Editor to reimburse himself for money spent by him in postages and other expenses of a small nature. Amounts received and paid for Volume V have been excluded from the Revenue and Expenditure Account.

CECIL KILPIN,
Chartered Accountant (S.A.)

SUN BUILDING,
CAPE TOWN,
7th April, 1937

The Society of Clerks-at-the-Table in Empire Parliaments

STATEMENT OF ACCOUNT FOR THE PERIOD FROM 23RD APRIL, 1936, TO 31ST MARCH, 1937

| REVENUE | | | | EXPENDITURE | | | |
|--|------------------|----|---|---|-----|----|----|
| | £ | s | d | | £ | s | d |
| Balance as at 23rd April, 1936, being excess of Income over Expenditure at that date | | | | Volume IV for 1935 | 6 | 14 | 3 |
| Parliamentary Grants | | | | Postage and Telephone | 1 | 19 | 0 |
| Dominion Parliament of Canada | 10 | 0 | 0 | Bank Charges | 3 | 5 | 7 |
| Federal Parliament of Australia | 10 | 0 | 0 | Cables and Telegraphic Address | 13 | 3 | 8 |
| New Zealand | 10 | 0 | 0 | Publications and Newspapers | 39 | 14 | 4 |
| Union of South Africa | 10 | 0 | 0 | Typing and Clerical Assistance | 5 | 0 | 0 |
| Southern Rhodesia | 5 | 0 | 0 | Roneoing | 67 | 8 | 3 |
| Nova Scotia | 10 | 0 | 0 | Printing and Publishing Volume IV | 10 | 6 | 11 |
| Subscriptions | | | | Stationery | 13 | 12 | 7 |
| Volume I | 1 | 0 | 0 | Travelling Expenses and Carriage | 10 | 2 | 0 |
| Volume II | 1 | 0 | 0 | Registration Fee—Stationers' Hall | 3 | 0 | 0 |
| Volume III | 2 | 0 | 0 | Gratuities to Messengers | 3 | 3 | 0 |
| Volume IV | 56 | 14 | 6 | Audit Fee | | | |
| Sales | | | | Cash Balance, being Excess of Receipts over Expenditure | 167 | 17 | 9 |
| Volume I | 8 | 17 | 6 | | 1 | 12 | 5 |
| Volume II | 10 | 10 | 0 | | | | |
| Volume III | 12 | 5 | 0 | | | | |
| Volume IV | 20 | 18 | 0 | | | | |
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Clerk of the House of Assembly.
PARLIAMENT OF THE UNION OF SOUTH AFRICA

Audited and certified correct

CECIL KILPIN,
Chartered Accountant (S.A.),
Sun Building,
Cape Town,
South Africa

7th April, 1937.

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Journal of the Society of Clerks-at-the-Table in Empire Parliaments

EDITED BY
OWEN CLOUGH, C.M.G.

"Our Parliamentary procedure is nothing but a mass
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VOL. VI

FOR 1937

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USUAL SESSION MONTHS OF EMPIRE PARLIAMENTS

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Journal

of the

Society of Clerks-at-the-Table

in Empire Parliaments

VOL VI.

FOR 1937

I. EDITORIAL

Introduction to Volume VI.—The year under review in this Volume covers a more varied range of questions of Parliamentary procedure than its predecessor, which included many references to important constitutional issues in the Dominions.¹ 1937 has seen: the passage of a Regency Act at Westminster; further investigation into the problem of Dominion-Provincial Relations in Canada, consideration by the Commonwealth and the States of Australia of the proposal to ratify the Statute of Westminster; an important appeal case relating to the powers of the Union Parliament, the coming into force of the new Constitution for Ireland and general elections for both Seanad and Dáil Éireann, the introduction of Provincial Autonomy in the eleven Indian Provinces, and the appointment by His Majesty's Government in the United Kingdom of a Royal Commission to consider the question of closer co-operation or association between Southern and Northern Rhodesia and Nyasaland.

To turn to questions of Parliamentary procedure, two important subjects have been given consideration in the House of Commons its control of Committee Money Resolutions, and greater uniformity in Local Legislation Clauses as well as increased expedition in Private Bill Procedure generally. There has also been discussion in that House upon the salaries of both Ministers and Members, as well as upon a scheme of

¹ i. e., King Edward VIII's Abdication, Federal Powers in Canada, Commonwealth v State in Australia, the new Constitution for Ireland, the Parliamentary Franchise in South Africa and the administration of its Mandated Territory, etc

pensions also for M P.'s, though no decision was come to upon this last mentioned subject.

We regret to announce the death of J W. McKay, I.S O., Secretary of the Bengal Legislative Council, on October 29, 1936, in Calcutta, through broken health due to incessant work. The funeral, which took place in that city the following day, was attended by many officials and non-officials, including the Honourable Sir B L. Mitter, Judicial Member to the Government of Bengal. Letters of condolence were received by Mrs. McKay when the news of her husband's death reached Darjeeling, the Government Headquarters at the time, from the Members of Government, and from His Excellency Sir John Anderson, the Governor, and obituary references regretting the loss of such a distinguished officer were made in the Council when it next sat, on November 9, 1936.

Mr. McKay joined the Legislative Department in 1911, and his long official experience stood him in good stead in the reorganization of the Department after the introduction of the Montagu-Chelmsford Reforms in 1921. In 1932, when he was acting as Registrar, he was chosen for appointment as Secretary to the Council, on the creation of a separate Council Department. Mr. McKay was a devoted and conscientious worker and his loss was felt to be irreparable. Our sincere sympathies are respectfully offered to his widow, and other members of his family, in their deep sorrow.

Acknowledgments to Contributors.—This year we have not the pleasure of acknowledging articles by several contributors, but we extend to Mr. D H Visser, J.P, our thanks for his regular and valuable contribution upon precedents and unusual points of Procedure in the Union House of Assembly.

We also acknowledge with equally grateful thanks the splendid co-operation which is being accorded the Society and

its JOURNAL by our members throughout the Empire. To single out names for special mention in this connection would make such a long list as to render its publication here impracticable. This splendid spirit is indeed a distinct encouragement to us in our work, so much of which must necessarily depend upon the regular and prompt supply of the required documents, facts and references by those best able and in a position to do so. Particularly, however, should we appreciate being allowed to mention the ready and willing assistance rendered by the Librarian and staff of the Parliament at Cape Town, where much of our reference work has now to be carried out.

Questionnaire for Volume VI.—There is still such an accumulation of matter of Parliamentary interest, from a procedure point of view, outstanding from the Questionnaires for earlier Volumes, which it has not yet been possible to treat in the JOURNAL, that in the Questionnaire for Volume VII, recently distributed, no new subject has been included. That does not mean, however, that members are not to continue suggesting subjects upon which the treatment of the combined experience of the Parliaments of the Empire is to be undertaken in the JOURNAL. Such suggestions we shall always continue to welcome, for, in order to give time for a subject to be first proposed and the information thereon to be collected by the annual Questionnaire from the various parts of the Empire, it is never too early for suggested subjects to be sent in.

The outstanding subjects abovementioned include the following: Cases of Privilege, Tampering with Witnesses, Suspension and important alterations in Standing Orders, Pecuniary interest of M P 's, the Crown's Powers under Oversea Constitutions in the amendment of Bills, Approval and Resignation of the Speaker, Parliamentary Expressions, *allowed* or *disallowed*, the Address-in-Reply, and Tables of Precedence in the British Empire. The last named, however, is now being prepared, but it is too long for inclusion in the JOURNAL unless a large number of current Parliamentary items, with which it is important that we keep abreast, are to be dropped. The question is therefore being considered of publishing these Tables separately, upon which we are awaiting information from our printers. Neither has it been possible to deal with an outstanding subject—Censure of the Chair—which was contained in the Questionnaire for the present Volume.

House of Lords (Life Peerages).—On March 24¹ Lord Strickland rose

¹ 104 H L. Deb 5. s 783 to 803

to call attention to the law in reference to Life Peerages and to ask His Majesty's Government whether under the law as it stands steps may be taken that would enable Prime Ministers from the Dominions to sit and speak in the House of Lords after the precedent established in South Africa by which Ministers speak in a House to which they do not belong, and to move for Papers

The mover, in his introductory speech, urged the granting of Life Peerages to Dominion Prime Ministers. Dealing with the legal aspect, he quoted the Wensleydale case,¹ and said that there would be great sympathy with those who ask for a review of the Resolution of 1856. Ever since the passing of such Resolution no Life Peerages had been created, except in so far as certain Lords of Parliament had been made members of the House of Lords *ex officio*.² Consequently, amending Acts were passed which gave to the *ex officio* Law Lords all the privileges of Peerage for the period of their natural lives. Several Bills that assumed the authority of the Wensleydale decision had passed Second Reading, in favour of the grant of Life Peerages. The noble Lord held with those who

¹ In regard to this subject May says *

Life peerages were formerly not unknown in our Constitution,† and in 1856 Queen Victoria, having been advised to revive the dignity, with a view to improve the appellate jurisdiction of the House of Lords, created Sir James Parke, late one of the barons of the Court of Exchequer, by letters patent, Baron Wensleydale, "for and during the term of his natural life." But the House of Lords referred these letters patent to a Committee of Privileges, which, after examining all the precedents of life peerages, reported their opinion, "that neither the said letters patent, nor the said letters patent with the usual writ of summons issued in pursuance thereof, can enable the grantee therein named to sit and vote in Parliament." The House concurred in this opinion, and Lord Wensleydale therefore did not offer to take the oaths and his seat, but was shortly afterwards created an hereditary baron, in the usual form ‡. The expediency of creating life peers, however, continued to be discussed §. Provision was made by statute for the Constitution of Lords of Appeal in ordinary in 1876,|| and their number was increased to 6 in 1913.¶ They enjoy the rank of baron and are entitled to a writ of summons for life, but their dignity does not descend to their heirs **

² Appellate jurisdiction, Act 1876 (39 and 40 Vict. c. 59).

* 13th Ed., 11, 12. † Parl. Paper (H.L.), sess. 1856, No. 18 of 1856

‡ 16, 106, 88 L.J. 38, 140 H.D. 3. s. 263, 1290; May Constitutional History, I, 196-201, see also 140 H.D. 3. s. 263, 508, 591, 898, 977, 1022, 1121, 1152, 1289

§ 142 H.D. 3. s. 780, etc., 143 ib., 428 etc

|| 39 and 40 Vict. c. 59

¶ 3 and 4 Geo. V, c. 21

** 39 and 40 Vict. c. 59, ss. 6, 14, 50 and 51. Vict. c. 70 s. 2, 3 and 4 Geo. V, c. 21. s. 1. The precedence of a baron's wife and child was granted to the wife and children respectively of a lord of appeal in ordinary by the Royal Warrants of December 22, 1876, and March 30, 1898. *Vide London Gazette*, August 16, 1898, 4935

maintained that there could be no augmentation or diminution of the Royal Prerogative except by an Act of Parliament, and said there were those who strongly supported the view that the Prerogative was unshaken and unshakable as vested in the Crown to create honours and peerages of any description either on the initiative of the King himself or on the advice of his Ministers or of the Prime Ministers of the Dominions, or, if it was a question of conferring the highest honour on a Prime Minister, then on the advice to the Crown of that Prime Minister's colleagues. The obvious solution was the passing without any delay of a one-clause Act of Parliament declaring the interpretation of Common Law that has been adopted as a consequence of the *Wensleydale* case *non sequitur*.

The noble Lord recalled the acceptance within recent times overseas of hereditary peerages, and expressed the view that it was not in the interests of constitutional democracy to endeavour to carry on government without admitting and recognizing the necessity of taking steps to co-ordinate the distribution of honours with due allegiance and regard for the Prerogative of His Majesty the King, the supreme centre and authority in the British Commonwealth of Nations. There was nothing in law to prevent the King creating a new order of Life Peers. The Rules of the House of Lords as to where those inside the chamber sit, and as to who are to speak are embodied in S.O. VIII. That Order did not derive its authority from any law, but solely from a Resolution of the House of Lords which could only be altered by another Resolution. When the Commons sat in the same Chamber with the Lords, up to the Parliament of 1290, seats were placed for distinguished visitors from Ireland, Scotland and Wales, and the equivalent of Writs of Assistance were issued to three or four commoners to be with the Lords and speak for the burgesses and the people who were allowed to go to the House to ask for redress for their grievances. The suggestion in the Motion, continued the noble Lord, of action by Resolution was made deliberately as a step, and as an expedient to eliminate the difficulties as to legislation and to show that, if their Lordships were to decide to alter S.O. VIII, subsequent legislation would be inevitable to facilitate the creation of Life Peerages.

The Lord Chancellor (Rt. Hon. Viscount Hailsham)¹ supported Lord Snell in stating that he regarded the Motion as primarily a question of law. The Lord Chancellor did not believe that under the law as it stood steps could be taken that

¹ 104 H.L. Deb. 5. s. 794 to 802.

would enable Prime Ministers from the Dominions to sit and speak in their Lordships' House. The Lord Chancellor was not a member of the House of Lords at all; in fact, he sat as Lord Chancellor when Sir Douglas Hogg, and before he had the privilege of becoming a Member of the House of Lords, his Lordship, continuing, said

The Lord Chancellor, as such, sits on the Woolsack, and the Judges and the Attorney General and Solicitor General who are to-day summoned to attend your Lordships' House, if ever they did attend, would sit again on these Woolsacks so as to be outside the House. When I address your Lordships' House, then I move into the House, as I am doing at this moment, and I speak from this place so that I am in my place in the House. In order to address your Lordships in Committee, I am only on the Front Bench, not by virtue of my position as Lord Chancellor, but by virtue of my position as a member of the House. If he were not a member of the House, the Lord Chancellor would have no right to sit in Committee on the Front Bench or in any other part of the House. I have the honour to be permitted to address your Lordships' House, not by virtue of the fact that I am Lord Chancellor, but simply and solely by virtue of the fact I am a Peer.

"My noble friend," continued his Lordship, "referred at considerable length and in great detail to the Wensleydale case. I certainly believe that the Wensleydale case was rightly decided." The Lord Chancellor then dealt with the practice from early times in regard to writs of summons to Parliament, and in conclusion observed that from time to time there had been an increased number of Law Lords created, and always by Act of Parliament, and he would be a bold man who would say that the Crown could exercise the Prerogative which had been denied as long ago as eighty years in the Wensleydale case, and had been denied by such a weight of authority as that to which he had referred and which had been acquiesced in by Parliament ever since.

The Motion for Papers was then by leave withdrawn.

House of Lords (Labour Peers).—On December 21,¹ Lord Snell made a statement calling the attention of their Lordships to a report in a prominent London newspaper which his noble friends considered was a reflection on their conduct as members of the House of Lords, namely—(1) That some of the Labour Peers are very poor; (2) that they were agitating to persuade the Government to pay them a salary, and (3) that they were trying to persuade some prominent Labour Member to state

¹ 107 H. L. Deb. 5 s. 531 to 533

their case in the House of Commons. The noble Lord went on to say that to the best of his belief only the first of those statements was true, which he observed implied no dishonour to them and he hoped no disadvantage to their Lordships. His personal preference was to ignore those statements as just one more illustration of the sabotage of character to which members of the Labour Party had grown accustomed, but that he was advised that inasmuch as those statements reflected on their conduct as Members of their Lordships' House they should be formally repudiated, and that the suggestion that they were canvassing Members of the House of Commons in order to secure for themselves financial benefits was definitely untrue and injurious to them as Members of the House of Lords. In conclusion the noble Lord expressed the hope that their Lordships would accept his denial of the truth of those statements and also respect their wish that no action be taken in regard to them.

The Lord President of the Council (Rt Hon Viscount Halifax, K G, G.C.S.I., etc) then addressed their Lordships and said that he thought the noble Lord had been much more actuated by the possibility of misunderstanding being created outside among those who were not familiar with public life, and that he had accordingly been justly careful to do what lay in his power to correct what he described as an aspersion upon the position of himself and his friends. The noble Lord had used the phrase "sabotage of character" but he (the speaker) said that the noble Lord could rest assured that there was no feeling of that sort in the House towards either himself or any of his colleagues who sat opposite. "If the noble Lord opposite, and his friends," continued the speaker, "have any thought that the statement to which he has referred in any way reflects upon their character as Members of the House and upon the work they do there, they can feel sure that the feeling in all parts of the House will be with them in the statement the noble Lord has made."

House of Commons (Mr. Speaker's Attendance at the Coronation).—On February 24,¹ the Secretary of State for the Home Department (Rt Hon Sir John Simon, G.C.S.I., etc) informed the House that His Majesty had been graciously pleased to signify a desire that, at His Majesty's Coronation in Westminster Abbey on Wednesday, May 12 next, the House should be represented by Mr Speaker, and that this intimation of His Majesty's Pleasure meant that the House would dispense

¹ 320 H.C. Deb 5, 8 2009.

with going to the Abbey in its corporate capacity Hon Members would therefore be free to go to the Abbey in the manner most convenient to themselves The following question was therefore then put and agreed to.

That this House, in accordance with His Majesty's gracious intimation, doth authorize Mr Speaker, as representing this House, to attend His Majesty's Coronation in Westminster Abbey on Wednesday, the 12th day of May next

Ministers of the Crown¹ at Westminster.—During the year under review in this issue of the JOURNAL an Act² was passed to remove certain anomalies in the present standing of Ministers by adjustments and alterations in their salaries and to revise the existing rules as to the distribution of Ministers between the two Houses. For the guidance of those who wish to study the debates at length, the Bill (107) for the Act passed through the various stages in the Commons on the dates given against them: introduction, March 23,³ 2R, April 12,⁴ CWH, 28 and 29 *idem*;⁵ Cons. and 3R, June 3,⁶ Cons. Lords' Amendments 30, *idem*,⁷ and RA. was signified on July 1⁸ There was also a Money Resolution to authorize the salaries and pensions contemplated under the Bill (SO 69), which was considered in Committee of the whole House on April 12⁹ and reported to and adopted by the House on the day following.¹⁰

As many points which occurred during the debate on the Bill are of special interest to readers of the JOURNAL it is proposed to quote some of them, particularly from the speeches of the Minister-in-charge of the Bill, the Secretary of State for the Home Department (Rt. Hon Sir John Simon, GCS I., etc.). Mainly the provisions of the Act are based upon the reports of the Select Committees of 1920¹¹ and 1930¹² and a Resolution of the House of Commons of 1936, already dealt with in the previous issue of the JOURNAL¹³

To take the sections of the Act *seriatim*, they make the following provisions Section 1 provides for the payments of the salary of £5,000 each to the Ministers named in Part I of the First Schedule, namely—Chancellor of the Exchequer, Secretaries of State (not to exceed 8), First Lord of the Admiralty, President of the Board of Trade, Minister of

¹ See also JOURNAL, Vol. V, 18, 19 ² 1 Edw. VIII and 1 Geo. VI, c. 38

³ 321 H C Deb 5. s. 2759, 2760

⁴ 322 *ib*, 363 to 499, and 553 to 680.

⁵ 325 *ib*, 1975

⁶ *Ib.*, 973 to 975

⁷ H C Paper 170

⁸ 322 *ib*, 639 to 752

⁹ 324 *ib*, 1191

¹⁰ 322 *ib*, 753, 754.

¹¹ H C Paper 241

¹² Vol. V, 18, 19.

Agriculture and Fisheries, President of the Board of Education, Minister of Health, Minister of Labour, Minister of Transport, and the Minister for the Co-ordination of Defence. To the Ministers given in Part II of such Schedule—namely, the Lord President of the Council, Lord Privy Seal, Postmaster-General and First Commissioner of Works¹—the salary is £3,000 p.a. and to the Minister of Pensions, alone named in Part III of such Schedule, a salary of £2,000 p.a.

Subsection (2) of Section 1 deals with the salaries of Parliamentary Secretaries and Under-Secretaries of State, which are to be as follows.

| | £ | p | a |
|--|-------|---|---|
| (i) Parliamentary Secretary to the Treasury | 3,000 | | |
| (ii) Financial Secretary to the Treasury . . . | 2,000 | | |
| (iii) Secretary for Mines . . . | 2,000 | | |
| (iv) Secretary of the Department of Overseas Trade | 2,000 | | |
| (v) The following Parliamentary Under Secretaries to the Departments of State (other than those mentioned in (iii) and (iv) above) namely, Admiralty, Air Ministry, Board of Education, Board of Trade, Burma Office, India Office, Ministry of Agriculture and Fisheries, Ministry of Health, Ministry of Labour, Ministry of Transport, Scottish Office and War Office . . | 1,500 | | |
| (vi) Assistant Postmaster-General . . . | 1,200 | | |

But it is provided that, if and so long as there are two Parliamentary Under Secretaries to the Foreign Office, to the Admiralty or to the War Office, the annual salary payable to each of the two Parliamentary Under Secretaries is to be determined by the Treasury, provided the aggregate of the annual salaries payable to both of them does not exceed £3,000.

Subject to the provisions of the Act as to number, section 1 (3) provides that the annual salaries payable to each of the Junior Lords of the Treasury is to be £1,000.

The maximum number of Secretaries of State has already been given, and section 2 limits also the number of Parliamentary Under-Secretaries of Departments of State to whom salaries may be paid under the Act as follows Treasury 2; Board of Trade 3 (including the Secretary for Mines and the Secretary of the Department of Overseas Trade); Foreign Office, War Office and Admiralty 2, other Departments of State (*vide* (v) above), and Post Office 1; and, Junior Lords of the Treasury 5.

Section 3 provides that whatever salary may be attached to the office of a Minister, if he sits in the Cabinet, his salary is to be made up to the normal figure of £5,000. It is an interesting fact that this is the first time in the history of the British Constitution that the word "Cabinet" and the phrase "Cabinet Minister" have ever appeared in the Imperial Statutes. This section therefore helps define that phrase and requires that the appointment of Cabinet Ministers shall be *Gazetted*. Section 3 also applies to the Ministers mentioned in Part II of the First Schedule and to the Chancellor of the Duchy of Lancaster, if in any case his salary should be less than £5,000 p.a.

Another point of constitutional interest in connection with Section 4, which fixes the salary of the Prime Minister at £10,000, is that this is practically the first mention in an Imperial Statute of "Prime Minister", the only other instances being the Chequers Estate Act, 1917,¹ and the Physical Training and Recreation Act of 1937.² Before the passing of the Act now under consideration, no salary at all has been attached to this office. The salary has always been received from another office, generally the First Lord of the Treasury. The title of "Prime Minister," further remarked Sir John Simon in his most interesting speech, was first used 200 years ago in regard to Sir Robert Walpole, at which period the phrase was considered of such little compliment, that Walpole once remarked in debate:

"I unequivocally deny that I am sole and prime minister."

Gladstone, in his "Gleanings of Past Years,"³ described the Prime Minister in these words:

"The Prime Minister has no title to override any one of his colleagues in any one of the Departments. . . . But upon the whole, nowhere in the wide world does so great a substance cause so small a shadow, nowhere is there a man who has so much power with so little to show for it in the way of formal title or prerogative."

In connection with this new salary to be attached to the office of Prime Minister it is to be noted that it is subject to both Income and Sur-Tax and will thus suffer a reduction from £10,000 to £6,241, and in fact to a greater reduction if the Prime Minister has other income.

¹ 7 and 8 Geo. V, c. 55.
² Vol. I (1879), 244.

³ 1 Edw. VIII, and 1 Geo. VI, c. 46.

Section 4 also provides for a pension of £2,000 to ex-Prime Ministers who occupy the Office of First Lord of the Treasury, and this has been made retrospective. But no pension is payable under this section to anyone in receipt of a pension under the Political Offices Pensions Act, 1869,¹ or of any salary payable and of moneys provided by Parliament, the revenues of the Duchy of Lancaster or the Consolidated Fund of the United Kingdom.

Section 5 introduces a new principle into the United Kingdom, although it is not unknown in the overseas Dominions,² namely—the provision of a salary for the Leader of the Opposition, who is by this Act allotted an annual salary of £2,000, provided he is not in receipt of another pension under the Act or under the Political Offices Pensions Act already mentioned, and if such is the case, the salary payable to him as Leader of the Opposition will be reduced by an amount equal to the amount of that pension.

Section 6 provides against a Minister receiving more than one Ministerial salary, even should he hold one or more such salaried offices. No person in receipt of a salary or pension under the Act is allowed to receive any remuneration as an M.P.

Under Section 7, the salary payable to the Leader of the Opposition and any pension authorized by the Act to an ex-Prime Minister or ex-First Lord of the Treasury is a charge upon the Consolidated Fund. All other salaries are paid out of moneys voted by Parliament and Section 8 empowers the House of Commons to reduce salaries.

Part II of the Act deals with the capacity of persons receiving salaries under the Act to sit and vote in the House of Commons. Of the pool of 17 Ministers under Part I of the First Schedule not more than 14 may so sit; of the four Ministers named in Part II thereof, not more than 3; and of the Parliamentary Under-Secretaries not more than 20. Should there be at any time a number of Ministers or Parliamentary Under-Secretaries in the House of Commons in excess of the numbers allowed under the Act, none of such number except any who held his office and was a Member of that House before the excess occurred may sit or vote in the House until the number

¹ 31 and 32 Vict c 72, 32 and 33 Vict c 60.

² In Canada, the Leader of the Opposition receives \$10,000, in addition to the Sessional allowance of \$4,000, New South Wales £176 p a. Both in the Dominion Parliament and Ottawa and that of the Commonwealth, stenographers for the Leader of the Opposition are paid for out of the Official Vote.

of such Ministers or Parliamentary Under-Secretaries in that House has been reduced by death, resignation or otherwise. The penalty for such a contravention is £500 for each day upon which he so sits or votes.

Part III of the Act contains the interpretation section, in which "Leader of the Opposition" is defined as "that Member of the House of Commons who is for the time being the Leader in that House of the party in opposition to His Majesty's Government having the greatest numerical strength in that House." Should there be any doubt as to who is such Leader then the certification in writing of Mr. Speaker shall be final. Section 11 deals with consequential amendments and repeals of enactments each of which is enumerated in the Third and Fourth Schedules to the Act, respectively.

House of Commons (Minister's Private Practice as Solicitor).—On June 10, the Prime Minister was asked¹ whether he was (now) able to make a statement with reference to the practice to be followed by members of his Government, both inside and outside the Cabinet, who are solicitors, in the matter of private practice, to which the reply was, that he had carefully considered the views expressed on this subject in the course of the debate in the House on June 3 last,² and that he concurred in the observations made by the Chancellor of the Exchequer.

The rule laid down by Sir Henry Campbell-Bannerman on March 20, 1906,³ had since been followed by successive Prime Ministers, and would be followed by himself. This rule, however, applied only to directorships and the Member's question referred to solicitors in private practice, whose position formed the subject of the discussion in the House already referred to. The Prime Minister agreed that it would be unreasonable to require that a solicitor, on becoming a member of the Government, should dissolve his partnership or should be obliged to allow his annual practising certificate to lapse. On the other hand, he should, in accordance with the principle underlying Sir Henry Campbell-Bannerman's rule, cease to carry on the daily routine work of the firm or

¹ 324 H.C. Deb 5 s 1953, 1954.

² *Ib.*, 1191 to 1277.

³ "The condition which was laid down on the formation of the Government was that all directorships must be resigned except in the case of honorary directorships, directorships in connection with philanthropic undertakings, and directorships in private companies" (154 H.C. Deb 4 s 234).

The above statement was also quoted by the Rt Hon Stanley Baldwin when Prime Minister, upon which he added "This rule has been observed by all subsequent Governments, and is still in force. As regards the other activities, no necessity has ever arisen to supplement with specific rules the traditional standards of public life in this country" (307 H.C. Deb 5 s 731).

to take any active part in its ordinary business, although he should not be precluded from continuing to advise in matters of family trusts, guardianships and similar cases. A certain amount of discretion must be allowed, since it is impossible to cover every conceivable case in any rule, but he was satisfied that under the conditions he (the Prime Minister) had laid down every reasonable requirement of propriety would be fulfilled.

House of Commons (Minister in Lords).—On March 15¹ the question was asked the Prime Minister in the Commons, whether, in view of the large expenditure to be incurred on the Royal Air Force and the importance and complexity of air questions, he would make arrangements whereby the Air Minister, whose Estimates were now the second largest of the Defence Ministries, might be a Member of the Commons. The Prime Minister (Rt Hon Neville Chamberlain) in reply referred the hon and gallant Member to the answer he gave to a question on March 19 last ² To a supplementary question, to the effect that in view of the enormous sums now involved in Air Defence, it was not only right that the Commons should have an opportunity of questioning the Minister himself, and was it not due to the status of the Air Ministry that it should be represented in the Commons by a Minister? the Prime Minister said that in view of the enormous amount of work which rested on the Secretary of State for Air, there were advantages in his being more free to devote himself to the work that he had to do and to be represented in the Commons by a Parliamentary Secretary.

On December 6,³ upon the Motion for the adjournment, an hon. Member raised the question of the desirability of the Secretary of State for Air (Rt Hon Viscount Swinton, G.B.E., M.C.) being a Member of the House of Commons, urging, among other things, that the head of a great spending Department, responsible for the arm on which our safety depended and which was peculiarly responsible for the defence of London, should be a Member of the Commons.

The Prime Minister (Rt. Hon Neville Chamberlain) in reply remarked that they were under a Constitution which provided for two Chambers, and if the work of the Government was to be efficiently and properly carried out, it must be adequately represented in the Upper Chamber as well as in the Lower. He did not consider that in the present circumstances five

¹ 321 H.C. Deb. 5. s. 1627.

² 330 H.C. Deb 5. s. 163 to 170.

³ See JOURNAL, Vol V, 18.

Members of the Cabinet in the other House was too large a number, and he was sure that the House, in accepting the Ministers of the Crown Act,¹ recognized that it would be too much restriction on the opportunities of the Prime Minister, who had to form a Cabinet, to insist that he should find always Members of the Commons to represent particular Ministries

House of Commons (Ministers and the Press).—On December 2,² the Prime Minister was asked whether his attention had been called to an article written by a Minister of the Crown in the *Daily Express* on Monday, November 29, and whether the publication of this article indicated that the Government had departed from the policy covering this matter, as laid down by the late Prime Minister in his statement of March 3, 1927, precluding Ministers from the practice of journalism in any form unless the article be of a literary, historical, scientific, philosophical or romantic character? The Prime Minister replied that his answer to the first part of the question was in the affirmative, and that in his reply to the second part he would refer the Member to the reply on the subject of the rule relating to contributions to the Press by Ministers which was given by the then Prime Minister on November 26, 1934,³ as follows

“The rule has never been interpreted as debarring Ministers from writing articles which supplement the means already used for enlightening the public in regard to Measures before Parliament and other administrative questions”

In supplementary questions it was suggested that these articles might have been written by the staffs, public or private, of Ministers and whether this was not imposing upon the Opposition, who have no staff, an ever increasing burden.

In answer to one supplementary question, the Prime Minister said that no question of payment arose in this particular case. A further supplementary question was asked—but not answered—as follows

Does the Prime Minister not see, that if officers of State Departments, drawing salaries from public funds, are to be called on to do the personal journalistic work of Ministers, who are not supposed to do journalistic work at all, it is very objectionable from the point of view of this House?

House of Commons (Leader of the Opposition).—Some interesting proceedings took place in this House in regard to “that Member⁴ of the House of Commons who is for the

¹ See p. 12 *ante*

³ 295 H.C. Deb. 5. s. 495, 500.

² 329 H.C. Deb. 5 s. 2236, 2237

⁴ Rt Hon C. R. Attlee

time being the Leader in that House of the party in opposition to His Majesty's Government having the greatest numerical strength in that House," which was the definition in the Ministers of the Crown Act, 1937,¹ of "Leader of the Opposition"

On December 9,² an hon Member (Mr W S Liddall, Lincoln) asked the Prime Minister (Rt Hon Neville Chamberlain) whether he would give an early date for the discussion of the Motion standing in his (the hon Member's) name, which read as follows:

[That, in view of the facts that at Madrid on 6th December, 1937, notwithstanding he had, before leaving this country, given an undertaking not to take part in any activities liable to be interpreted as inconsistent with His Majesty's Government's policy of non-intervention, the Leader of His Majesty's Official Opposition (the Right Honourable Gentleman the Member for Limehouse) stated publicly, etc]

To which the Prime Minister stated that the Motion quoted in the question referred to the conduct of a Member of the House and that the proper course was to defer the reply until the Rt Hon. Gentleman, the Leader of the Opposition, was able to be in his place

Among other supplementary questions, another hon Member asked Mr Speaker. "If any hon. Member of this House feels aggrieved in consequence of something done by another individual in this House or outside, is he entitled to put down a vote of censure on him?" to which Mr Speaker replied that any hon. Member can put down a substantive Motion about anything.

On the 13th *idem*,³ Mr. Attlee asked Mr Speaker's permission to make a personal explanation and referred to the hon Member for Lincoln (Mr. Liddall) having placed upon the Order Paper a Motion attacking his (Mr. Attlee's) honour, etc., and remarked

A Motion inviting this House to pass a Vote of Censure upon a private Member for an action not arising out of the business of this House is a very unusual proceeding.

* * * * *

It cannot be too strongly emphasized that a private Member of Parliament does not by his words or actions involve the British Government, but that he is a free man with the right of

¹ 1 Edw VIII and Geo VI, c. 38, sec. 10.

² 330 H C Deb. 5. s. 564 to 567.

³ 330 H C Deb. 5. s. 821 to 824.

freely expressing his opinions. In his Motion, the Hon. Member for Lincoln has specifically referred to me as "the Leader of His Majesty's Official Opposition," and seems to imply that this places me in a special category. The Leader of the Opposition is a private Member. He owes no allegiance to the Government. No action of his can in any way implicate the Government. He is responsible only to his constituents and to the Members from whom he derives his position.

The Prime Minister remarked, that the Rt Hon Gentleman had made his personal statement on his visit to Spain and hoped that the House would now accept it and take what seemed to him the right and most dignified course, namely, to let it rest there.

It was later reported in *The Times*¹ that Mr. Liddall had withdrawn from the Order Paper of the House of Commons the Motion he had set down criticizing the Leader of the Opposition in connection with his recent visit to Spain. The concluding words of Mr. Liddall's statement issued to the Press read

However, in view of what was said by the Prime Minister, and with the approval of hon Members whose names were associated with the Motion, I have had the same withdrawn.

House of Commons (Non-Publication of Government Documents).—An unpublished Memorandum² was issued by the Government to various electrical and local authority associations indicating the Government's provisional conclusions as to the reorganization of the electricity supply industry. The Memorandum, however, not having been made available to Members, a question was asked on May 31, as to whether a copy of the document could not be placed in the Library.³ This request was repeated in a further question on June 2, but the Minister replied that it was a confidential document. On June 3, the request that the document be made public was again urged, especially as Members had been invited to attend conferences on the subject. On the 11th *idem*, the Minister in reply to another question on the subject,⁴ informed the House that further copies of the Memorandum had been sent to the Vote Office for the use of Members, and that copies would be obtainable from H.M.S.O.

House of Commons (Officers of the Crown: Business

¹ December 14, 1937.

² Confidential Memorandum, S.E. 3877-3881 of April 5.

³ 324 H.C. Deb. 5. s. 269, 677, 1013, 1014, 1169, 1170

⁴ *Ib.*, 2109.

Appointments).—On July 14¹ the Prime Minister was asked whether he was in a position to state the results of the examination into the question of the acceptance by Officers of the Crown services of business appointments to which reference was made in paragraph 15 of Command Paper 5451 issued last May? The Prime Minister's reply was

Yes, Sir The Government have completed their study of this question and it is proposed that a White Paper should be presented forthwith giving the conclusions the Government have reached.

As this subject is one which seriously affects also the various Oversea Governments in the British Empire, all equally anxious with the Imperial Government to preserve the finest traditions of the Civil Service, the White Paper² referred to by the Prime Minister of the United Kingdom is given at length as follows.

MEMORANDUM ON THE SUBJECT OF THE ACCEPTANCE OF BUSINESS APPOINTMENTS BY OFFICERS OF THE CROWN SERVICES

As stated at the end of paragraph 15 of Cmd 5451 ("Statement relating to Report of the Royal Commission on the Private Manufacture of and Trading in Arms, 1935-36"), the question of the acceptance of business appointments by officers of the Crown Services is one which "calls for careful study, and is not being overlooked."

After close examination of this question, His Majesty's Government have reached the conclusions set out in the following paragraphs

2 The surest guide for the conduct of officers of the four Crown Services must always be the existence and maintenance of great traditions and high standards in those Services, no rules, however elaborate, can be a substitute for this all-important condition. The Appendix to this paper contains an extract from the Report of a Board of Enquiry published in 1928 (Cmd 3037) enunciating certain general principles by which the conduct of Civil Servants should be regulated, these received governmental approval, and are, of course, equally applicable to the Royal Navy, the Army, and the Royal Air Force

3 At the same time, His Majesty's Government recognize that it is in the interest of the Services themselves, as well as of the country, that public confidence in the disinterestedness and integrity of the Crown Services should be maintained at the highest point, and that there should be no possibility of a suggestion—however unjustified—in the public mind that members of those Services might be influenced in the course of their official relations with business concerns by hopes or offers of future employment in any of those concerns

¹ 326 H.C. Deb. 5. s. 1248.

² Cmd. 5517 of 1937.

4 In emphasizing the importance of preserving public confidence, His Majesty's Government in no sense imply that there is anything intrinsically improper or undesirable in officers, on retirement at the end of their Service career, accepting business appointments. But they realize that there are types of case which might lend themselves to misunderstanding, and they have decided to require Government assent to the acceptance of appointments within these types

5 These would include businesses and other bodies

- (a) which are in contractual relationship with the Government,
- (b) which are in receipt of subsidies or their equivalent from the Government,
- (c) in which the Government is a shareholder;
- (d) which are in receipt from the Government of loans, guarantees or other forms of capital assistance,
- (e) with which Services or Departments or Branches of Government are, as a matter of course, in a special relationship,

and semi-public organizations brought into being by the Government and/or by Parliament

6 In such cases all Officers of the rank of Assistant Under-Secretary of State (or Principal Assistant Secretary or, in Missions abroad, Ministers), Rear-Admiral, Major-General, Air Vice-Marshal—and above—will be required to obtain the assent of the Government before accepting an offer of employment

In addition, in each of the four Services there are posts of a special or technical character not covered by the preceding sentence to which a similar requirement will apply. Lists of such posts will be prepared in the respective Departments, in conjunction with the Treasury, to ensure parity of treatment

7 The prior assent of the Government will take the form of approval by the Minister concerned after consultation with the Treasury, but, after the lapse of two years from the date of retirement, such assent will no longer be required

8 The like principles will apply in the case of officers who, in exceptional circumstances, may wish to resign from the Services to take up outside occupations

APPENDIX

We think, in conclusion, that we shall not be travelling outside our terms of reference if, as three Civil Servants of some experience and jealous for the honour and traditions of the Service, we indicate what we conceive to be the principles which should regulate the conduct of Civil Servants—whether engaged in Home Departments or on diplomatic missions—in their relation to the public

His Majesty's Civil Service, unlike other great professions, is not and cannot in the nature of things be an autonomous profession. In common with the Royal Navy, the Army, and the Royal Air Force, it must always be subject to the rules and regulations laid down for its guidance by His Majesty's Government.

This written code is, in the case of the Civil Service, to be found not only in the Statutes but also in Orders in Council, Treasury Circulars and other directions, which may from time to time be promulgated, but over and above these the Civil Service, like every other profession, has its unwritten code of ethics and conduct for which the most effective sanction lies in the public opinion of the Service itself, and it is upon the maintenance of a sound and healthy public opinion within the Service that its value and efficiency chiefly depend.

The first duty of a Civil Servant is to give his undivided allegiance to the State at all times and on all occasions when the State has a claim upon his services. With his private activities the State is in general not concerned, so long as his conduct therein is not such as to bring discredit upon the Service of which he is a member. But to say that he is not to subordinate his duty to his private interests, nor to make use of his official position to further those interests, is to say no more than that he must behave with common honesty. The Service exacts from itself a higher standard, because it recognizes that the State is entitled to demand that its servants shall not only be honest in fact, but beyond the reach of suspicion of dishonesty. It was laid down by one of His Majesty's Judges in a case some few years ago that it was not merely of some importance, but of fundamental importance, that in a court of law justice should not only be done, but should manifestly and undoubtedly be seen to be done, which we take to mean that public confidence in the administration of justice would be shaken if the least suspicion, however ill-founded, were allowed to arise that the course of legal proceedings could in any way be influenced by improper motives. We apply without hesitation an analogous rule to other branches of the public service. A Civil Servant is not to subordinate his duty to his private interests, but neither is he to put himself in a position where his duty and his interests conflict. He is not to make use of his official position to further those interests, but neither is he so to order his private affairs as to allow the suspicion to arise that a trust has been abused or a confidence betrayed. These obligations are, we do not doubt, universally recognized throughout the whole of the Service, if it were otherwise, its public credit would be diminished and its usefulness to the State impaired.

We content ourselves with laying down these general principles, which we do not seek to elaborate into any detailed code, if only for the reason that their application must necessarily vary according to the position, the Department and the work of the Civil Servant concerned. Practical rules for the guidance of social conduct depend also as much upon the instinct and perception of the individual as upon cast-iron formulas; and the surest guide will, we hope, always be found in the nice and jealous honour of Civil Servants themselves. The public expects from them a standard of integrity and conduct not only inflexible but fastidious, and has not been disappointed in the past. We are confident that we are expressing the view of the Service when we say that the public have a right to expect that standard, and that it is the duty of the Service to see that the expectation is fulfilled.

House of Commons (Salaries of M.P.'s).—In reply to a question in the House on April 7¹ as to whether he was aware that under the regulations affecting the salaries of civil servants, those who would prior to the war have drawn £400 per annum now received £515, and whether he would take steps to have the question of Members' salaries reconsidered with a view to their being given somewhat similar increases, the Prime Minister (Rt Hon Stanley Baldwin) said, he could see no close analogy between Government employment and Membership of the House of Commons. In regard to the second part of the question, the Prime Minister noted the suggestion made by the Member, but he (the Prime Minister) would not care to commit himself to any statement upon it until he had made further inquiries. Supplementary questions were then asked, including the statement that the cost of living had increased 50 per cent. since Members' salaries had been fixed at £400 per annum.

In reply to a further question asked by the same Member on May 27,² the Prime Minister replied that he had made inquiries whether the salaries of M.P.'s should be increased. The existing figure of £400 per annum was fixed in 1911, and it was obvious that if £400 was adequate in circumstances then existing, it cannot be so regarded in the very different conditions prevailing to-day. The Prime Minister concluded by stating that after careful consideration the Government had decided to propose to the House that the figure should be increased to £600, and that the necessary steps would be taken at an early date.

Certain supplementary questions were asked, including one enquiring if the proposal would be framed in such a way as to enable the House, if it so wished, to use a fraction of the sum to create a scheme for a pension fund for Members of Parliament?

On June 3³ the Prime Minister was asked when it was proposed to take the Supplementary Estimate dealing with an increase of the Members' salaries, and whether the decision would be left to a free vote of the House? Another Minister, in replying to the question, said that it was proposed to embody the Government's proposal in a Resolution which would be placed upon the Paper at an early date, and that a supplementary vote would be presented in due course. The answer to the second part of the question, said the Minister, was in

¹ 322 H.C. Deb. 5. s. 180, 181.

² 324 H.C. Deb. 5. s. 1165.

³ 324 *ib.*, 425, 426.

the negative. Among the supplementary questions was one inquiring whether the usual practice be followed and Members be allowed to return this increase to the Treasury if they did not want it, to which the Minister answered "Nobody can have this forced upon them"

On June 9¹ the Financial Secretary to the Treasury (Lt-Col the Rt. Hon. D. J. Colville) was asked how many M P's there were whose expenses of office for Income Tax purposes absorbed their whole salary and what was the average proportion of salary absorbed by expenses among Members as a whole. The Financial Secretary in reply said that it was not the practice to give particulars of Income Tax assessments, but he could inform his hon. Friend that there was a large number of cases of M P's in which the deduction allowed for expenses exceeded the flat-rate deduction of £100 fixed under the Rules applicable to Schedule E of the Income Tax Act, 1918

On June 10² a similar question was asked to the supplementary question on this subject on May 27, and the Prime Minister (Rt. Hon. Neville Chamberlain) replied that he could not anticipate the Ruling of the Chair, but it was possible that the debate on the Resolution which it was proposed to move in regard to Members' salaries might afford a suitable opportunity for discussing conditions which hon. Members may wish to attach to the proposed increase.

On June 22³ the Prime Minister (Rt. Hon. Neville Chamberlain) in moving the following Motion in the Commons:

That in the opinion of this House, the rate at which salaries are payable to Members of this House should be increased to £600 a year,

said that the salary⁴ now paid M P's, with the exception of those in receipt of salaries as Officers of the House, Ministers or Officers of His Majesty's Household, was fixed in August, 1911. In 1920 a Select Committee⁵ of the Commons was set up to inquire into the expenses of Members, which amongst other recommendations said

Your Committee are agreed that if the sum of £400 per annum was necessary in 1914—and no evidence has been submitted to the contrary—such an amount is inadequate to-day

¹ 324 H C Deb 5 s 1764, 1765

³ 325 *ib*, 1049 to 1122. ⁴ £400 p a.

² 324 H C Deb 5 s 1953.

⁵ H.C. Paper 241 of 1920.

That Committee, however, did not recommend any change of the amount as it then stood, but added.

Your Committee were impressed by the evidence submitted and by their private information as to the difficult financial position of certain Members at the present time. They are satisfied that further consideration should be given to this matter in the near future, but in view of the present position consider it inadvisable to make any specific recommendation at this time.

But the Committee did make certain recommendations as to the railway fares of Members to and from their constituencies. The Prime Minister, in the course of his speech, quoted certain words used by the then Prime Minister during the debate on the Second Reading of the Ministers of the Crown Bill,¹ as follows:

I want either by myself, or possibly with one of my colleagues, to make my inquiries of one or two right hon. or hon. Members who can give me the information I require, and make up my mind as to whether there ought to be a change or not. I propose to do that as soon as I can. If I and whoever joins with me in these discussions are convinced that there is a real reason and case for some increase in the present amount, then I shall be prepared to recommend to my colleagues further action, if not convinced, then to drop it. But from what we have heard from making careful inquiries through the usual channels, I fancy that the general feeling of the House coincides very much with what I have indicated. I am quite convinced that if the House as a whole believe and realize that there is a necessity for such an increase, they will support me, and, after all, if anybody objects, supposing the Government should recommend some increase, it is always open to hon. Members to do as I did when the salaries were first paid, that is not to take the cheque.²

In the abovementioned inquiry, continued Mr Chamberlain, in which the then Prime Minister associated the Chancellor of the Exchequer, opportunity was offered of looking into the budgets of a number of hon. Members who were good enough to submit them, in confidence, for the information of the Government. This inquiry disclosed a considerable number of cases of hon. Members not possessed of any other means than that afforded by their Parliamentary salaries, and who were reduced to expedients which it was felt were inappropriate and improper to be imposed upon a Member of the House.³

Among the considerations to be borne in mind, continued

¹ See p. 12 *ante*

² 322 H.C. Deb. 5 s. 1050.

³ 325 H.C. Deb. 5 s. 1050, 1051.

the Prime Minister, were that (1) the cost of living was still 50 per cent. higher than when the salary was fixed, (2) the number of electors in many constituencies had increased; (3) the volume of Parliamentary business was greater.

The Prime Minister said

On the other hand, one does not want to fix the salary so high that it becomes an inducement to people to enter this House for the purpose of earning more than they would earn outside and, on the other, we do not want to fix it so low that men or women who could give valuable service to the House should be prevented from doing so merely by the fact that they have not sufficient means to afford it ¹

The Prime Minister therefore remarked that it had been decided to recommend to his colleagues in the Ministry, and subsequently to this House, the figure of £600, which would mean an extra cost of £112,000 a year ²

During the course of the debate an hon. Member quoted an amendment moved when the proposal for the £400 allowance to Members was under consideration by the House, namely—to leave out from the word “That” to the end, and to add the words

this House declines to provide money for the payment of Members of Parliament, because such payment would be an indefensible violation of the principle of gratuitous public service, would involve the taxpayers in heavy and unnecessary expense, and would encourage a demand on the part of members of local bodies to be paid for their services, and further because, in the opinion of this House, there would be a peculiar impropriety in Members of Parliament voting salaries to themselves ³

Another hon. Member made the following observation during the debate:

It is very undesirable that we should have a class of professional politicians, and that a young man should say, “Shall I become a barrister, solicitor, or join one of the great trades, or shall I try to get £600 a year as a Member of Parliament?” Such a person necessarily loses independence. It would be impossible for a person who depended on the £600 a year and who had no outside job of any kind, to be independent. He would have to do as he was told by the Government of the day and by the Whips of the day, who, as everyone knows, have quite enough power as it is. ⁴

Another quotation from the debate on the subject in 1911 was:

¹ *Id.*, 1052

³ 29 H.C. Deb. 5 s 1384.

² 325 H.C. Deb 5 s 1052

⁴ 325 H.C. Deb 5 s 1073.

It is absolutely inevitable that once salaries are paid to Members of Parliament who have control over the amount of their salaries, like all other classes who are paid wages, they will seek to raise those wages whenever they get the opportunity ¹

An amendment was moved during the debate, namely—after “increased” to insert, “as from the beginning of next Parliament”² The hon Member in moving this amendment urged in its support, that it was somewhat indecent for Members to add 50 per cent to their salaries without giving the electorate a chance to object; that hon Members seem to have forgotten the precedent of 1911, and quoted from the debate at that time, as follows

CHANCELLOR OF THE EXCHEQUER (Mr Lloyd George) The Prime Minister, immediately before the last General Election, stated to the House of Commons that he proposed, if we got a majority in the new Parliament, to submit a Resolution . . . for the purpose of paying the Members ³

The PRIME MINISTER (Mr MacDonald) It is the intention of the Government, if they have the opportunity, and the requisite following, next year, to propose provision out of public funds for the payment of Members, and they think that that intention being announced before the General Election takes place, there will be no constitutional impropriety in the provision being made effective, if Parliament sees fit to approve it, in the Parliament which will assemble after the General Election ⁴

Another hon. Member observed during the course of debate, that he opposed only the principle that Parliament should vote this increase to itself, and that they were in the position of directors of a company, of which the country—the electorate—are the shareholders “Who can conceive of the directors of a company,” remarked the hon. Member, “deciding to raise their own fees without reference to the shareholders?” The same hon Member quoted that in South Australia they desired to raise their own salaries, but decided that they could not do it with propriety without consulting the electorate, and according to the Constitution of the State they held a referendum, in which the increase of salaries was defeated by two votes to one ⁵

The same hon. Member quoted some remarks by various classes of people upon the question of M.P.’s salaries, all of whom agreed that Parliament should not vote an increase to its own Members. One of these members of the public said:

¹ 29 H.C. Deb 5 s. 1394

² 29 H.C. Deb 5 s. 1366

³ 325 H.C. Deb 5 s. 1093, 1095.

⁴ 325 H.C. Deb. 5 s. 1086.

⁵ *Ib.*, 1401.

Members were elected to Parliament with their eyes open to the fact that they would be there for five years at £400 a year. They made the bargain with the electors and should stick to it.¹

Upon the amendment being put, a division was claimed: Ayes, 31, Noes, 326. The main question was agreed to, the voting being Ayes, 325; Noes, 17.

On June 24,² the Chancellor of the Exchequer (Rt. Hon Sir John Simon, G C S.I., etc.) was asked in what way the Government proposed to implement the Resolution on Members' salaries and from what date it would take effect, to which was replied, that it was proposed to present to the House early next month a Supplementary Estimate, providing for the additional cost as from July 1.

House of Commons (Absent Members).—An interesting correspondence and sub-leader on this subject appeared in *The Times*.³ It originated with a letter by Lord Midleton, K.P., etc., a distinguished Member of the House of Lords who succeeded to the title in 1907 and who previous to that was for 26 years a Member of the Commons, when for some time he held the office of Secretary of State for War and Secretary of State for India. Lord Midleton drew attention to the small attendance of M.P.'s on October 21,⁴ during the debate on vital foreign questions on which the public mind had been concentrated since Parliament adjourned. There was at that time 430 supporters of the Government in the House, of which, he said, only 204 attended to support their leaders, and concluding by asking: "Is it not time for the constituencies to insist on a higher conception of public duty by their representatives?"

To this letter "Absent Member" replied that times had changed since Lord Midleton took an active part in Parliament, and electorates were small. To-day, September, to some extent and October alone were available as priceless months in which an M.P. could get in touch with an electorate, which in his case had trebled since the war, and do invaluable work for the Government, while at the same time attending to the professions and callings by which, far more than in Lord Midleton's time, Parliament was in active touch with the life of all sections of this and other nations. Further, that it was no longer a proud Member's duty or necessity to sit, as they would have preferred, to listen to the speeches they

¹ *Ib.*, 1098

² 325 H C Deb 5 s 1098

³ *October* 23, 26, 27 and 30, 1937

⁴ 327 H C Deb 5 s 57 to 178

could read in *Hansard* next day, and that their leaders were better served by the M.P. explaining to his electorate the remarkable services rendered on their behalf by the Government in national and international affairs.

Another correspondent attributed the lack of attendance of Government supporters during part of that debate and at the division to two principal causes, namely—(1) The fact that to-day such debates offer few opportunities for back-benchers to speak (only five back-bench supporters were called on Thursday); and (2) Signor Mussolini's unexpected action on Wednesday which, to use the Prime Minister's own words, "... very largely knocked the bottom out of this debate." Another correspondent and long-experienced M.P. remarked that the idea that there are ever 400 or 500 present in the House of Commons was simply a myth. One had only to count the seating space.

In its sub-leader, however, *The Times* remarked that the point that small divisions on great subjects might give rise to misconceptions was not one that could be neglected, particularly because misconceptions might easily arise, not so much at home, where the details and the setting of a Parliamentary occasion were generally well known, as abroad, where critics were only too often ready to be misinformed.

House of Commons (Broadcasting Parliamentary Proceedings).—On February 15¹ an hon. Member asked the Postmaster-General whether he was aware that in the daily reports issued by the B.B.C. regarding proceedings in Parliament an impression of bias had been aroused frequently, owing to lack of proportion and perspective; and, in order to avoid this in future, would the Minister consider requiring the B.B.C. to submit proposed bulletins to the Whips of each Party before they were issued. The Minister in his reply remarked that he didn't think, even if the proposal were practicable, it would be welcomed either by the Whips or by the House.

In his reply, as above, the Minister referred to what he gave earlier in the session to a similar question² by another Member, in which the Minister said that, since March, 1928, the B.B.C. had been empowered to broadcast speeches and statements on topics of political controversy on the understanding that such broadcast material should be distributed with scrupulous fairness. In reply to supplementary questions,

¹ 320 H.C. Deb. 5, s. 829 to 831

² 319 ib., 565, 566

the Minister stated that there had been unquestionably complaints from both sides but that the Government's decision had been that the Corporation should refrain from broadcasting its own opinion by way of editorial comment on current affairs. As stated in the White Paper, this rule was extended by the Government to the publications of the Corporation as well as to the broadcast programmes.

Parliamentary Catering at Westminster.—When Parliament reassembled on October 26 after the Recess, it was noticed in the House of Commons that certain changes had been made. For instance, floodlighting had been thrown on some of the oak-panelling, a drastic alteration had been made in the dining-room accommodation, and dinners had become dearer. These changes followed the Report of a Joint Committee of both Houses¹. Up to 1922 the dining-rooms received a subsidy from the Treasury, since when the Kitchen Committee has been trying to make both ends meet. The deficiency during recent years has already been given in these columns. The Report of the Joint Committee abovementioned, which was appointed to consider and report upon the accommodation for refreshment rooms and lavatories in the Palace of Westminster, stated that the House of Lords employed a firm of contractors to provide meals and refreshments for Peers and for the staff, without a subsidy from the Treasury or from any other source, an arrangement which has given satisfaction and proved economical. In the House of Commons, on the other hand, though its Kitchen Committee is directly responsible for its own catering, no contractor is employed and no change is desired. It appeared to the Joint Committee therefore that no alteration at present was possible in that respect. The Committee, however, commended certain extension of accommodation in the Commons dining-rooms and serveries, as well as improvement in conveniences, and ventilation, with additional lavatory accommodation, each House being directly and solely concerned with its own requirements. The Committee therefore suggested that Parliament should sanction the expenditure necessary to carry out what was required in both Houses.

In June, 1937, the Kitchen and Refreshment Rooms Select Committee of the House of Commons issued a Special Report² showing that for the year ended December 31, 1936, the total receipts amounted to £29,061 17s. 10d., as against

¹ H. L. Papers, 170 and H. C. Paper 149 of 1936

² H. C. Paper 134 of 1937

£25,931 17s 1d in 1935, and the total expenditure for 1936 £29,485 19s 9d, showing a deficit of £424 1s 11d. on the year as compared with a deficit of £603 13s 4d for 1936, after, in both instances, providing free meals during the Session to all staff and defraying the expenditure of £9,756 10s 3d. on wages, salaries, health and pension insurance, £506 16s 7d on expenses, laundry, postage, etc; and £640 3s 1d. on repairs and renewals. Purchases amounted to £18,582 9s 10d as against £16,525 17s 6d for 1935

During the year 1936 the House sat in Session 156 days in comparison with 144 in the previous year, and the number of meals served (including teas and meals served at bars) was: Breakfasts 323, Luncheons 21,050; Dinners 37,315; Teas 88,730; Suppers 802, and Bar meals 11,029.

The Committee point out that the increase in revenue and number of meals served as compared with the previous year is mainly accounted for by the business of the House occupying 156 as against 144 days in 1935

After providing for all liabilities the amount standing to the credit of Capital Account in the Balance Sheet, represented by Stock-on-hand, Cash-in-hand and at Bank, and Sundry Creditors, was £4,029 10s 9d

The Committee viewed with concern the continued trading loss which had been made in every year but one since 1928. Only its reserve, represented by stock-on-hand, etc, had made it possible for it to carry on, moreover, the position had been made more difficult by a demand among Members for a lower minimum tariff in the Members' dining-rooms, while the rise in the prices of all commodities and equipment would make it necessary, if the then present conditions continued, for the prices of meals to be raised. The question of the abolition of tipping had also been raised in the House, and it was estimated that the corresponding addition to the wages of the staff would amount to £3,000 per annum, a sum which could not possibly be raised from the present resources of the Committee.

The Committee therefore were of opinion either that the time had come for the restoration of the annual subvention on a sufficient scale to cover its present difficulties, or, for the Treasury to defray the costs of staff and equipment, as in other departments of the House

To bring this subject up to the end of the year under review, however, it is necessary to deal with the Special Report¹

¹ H C Paper 122 of 1938.

from the House of Commons Kitchen and Refreshment Rooms Select Committee ordered on May 26, 1938, to be printed

The total receipts for the year ended December 31, 1937, amounted to £31,433 16s 2d., and the total expenditure, including £14 14s 10d to Bank Charges for overdraft, to £32,461 18s 1d.

After providing free meals to all the staff and expenditure for wages, salaries, health and pensions insurance £10,710 17s. 8d, expenses, laundry, postage, etc, £542 8s; repairs and renewals, £547 19s 1d, and the overdraft above-mentioned, the Trading and Profit and Loss Account showed a deficit on the year of £1,028 1s 11d. The purchases amounted to £20,645 18s 6d. During the year the House sat in Session 166 days, and the number of meals served (including teas and meals at bars) was. Breakfasts 1,074; Luncheons 23,286; Dinners 38,119; Teas 92,580, Suppers 454; and Bar meals 11,990

The increase in revenue and number of meals served ~~was~~ compared with the previous year was accounted for by the business of the House occupying ten more days, and the amount received for refreshments on Coronation Day

Of the amount paid for wages, etc, as above, £2,280 18s 5d. was paid for periods when Parliament was adjourned or prolonged, as against £2,222 5s 2d in 1936

The Committee concludes its Report as follows.

4. Your Committee are of the opinion that the trading loss of £1,028 1s. 11d which was incurred last year is largely due to the peculiar difficulties which have to be faced by the Refreshment Department.

The main difficulties are as follows.

- (a) The dining-rooms are open only about 34 weeks out of 52, and there are not more than 4½ working days in any one week
- (b) There is great uncertainty as to the number of meals which may be required in any given day
- (c) Full wages are paid to all employees during the Easter and Whitsun recesses, and more than one-third of the staff receive either full pay or a retaining allowance during the Christmas and summer recesses.
- (d) No receipts are available during these periods to meet the wages.

5. Although the best food and wines are supplied, your Committee consider that the prices charged are very moderate, and they feel that it is impossible to reduce expenditure by cutting down wages or impairing the quality of commodities.

They are convinced that the receipts of the Refreshment Department can be considerably increased if Members of the House will co-operate by availing themselves more frequently of the amenities which are offered for entertaining their friends, and they are of the opinion that a 20 per cent. increase of sales should be sufficient to meet the present expenditure and make provision for new equipment.

6. After providing for all liabilities, the amount standing to credit of Capital Account in the Balance Sheet represented by Stock-on-hand, Cash-in-hand and at Bank, and Sundry Creditors, is £3,001 8s. 10d. Your Committee find the Accounts presented, with the working results and explanations given, satisfactory.

House of Commons (A.R.P.).—On December 13¹ the question was asked whether any air-raid precaution schemes had been prepared for the protection of the staff and Members of the House of Commons, to which the First Commissioner of Works (Rt. Hon. Sir Philip Sassoon, Bt., G.B.E., etc.) replied in the affirmative, and said that the scheme comprised refuge accommodation, together with a plan of gas-proofing and a reserve of sand-bags for additional protective work, and that the fire-fighting arrangements had also been strengthened and also that a stock of gas masks would be kept on the premises, and squads for rescue and clearance and decontamination work would be raised from the industrial staff employed on the site.

In reply to a supplementary question by the same Member, as to whether any steps would be taken to organize the Members of the House into fire squads or drill squads with buckets and spades, the Minister said he would look into it.

House of Commons (Members' Air Travel Facilities).—On March 2² a question was asked, whether authority would be given for Members of Parliament to obtain tickets for travel by air between London and their constituencies in exchange for Parliamentary travelling vouchers? The Chancellor of the Exchequer (Rt. Hon. Neville Chamberlain) replied that

A scheme under which Members may travel to and from their constituencies by air, where suitable arrangements are available, was announced in the House on July 15, 1935, and particulars were circulated in the OFFICIAL REPORT of that date³. Special warrants are issued for this purpose and are obtainable on application to the Fees Office.

¹ 330 H.C. Deb. 5, s. 802.

² See JOURNAL, Vol. IV, 37, 38.

³ 321 H.C. Deb. 5 s. 176, 177.

The same Member then put the following supplementary question:

Does this enable Members to travel by air without paying the excess cost over the railway fare ?

To which Mr Chamberlain replied

My recollection is that they are asked to pay the difference between the railway fare and the air service fare

House of Commons (Ventilation).¹—Questions relative to this subject were asked on June 14,² July 19³ and July 20,⁴ and in reply to the first question, information was given shewing that in the printed note circulated to Members in July, 1936, the approximate figures there given were

| | |
|--|---------|
| Provision of local heating to enable air to be brought in at a lower temperature | £ 6,000 |
| Alteration of method of admission and distribution of air | 5,000 |
| Complete conditioning plant, including control of humidity | 20,000 |

In reply to the last question, the First Commissioner of Works (Rt Hon. Sir Philip Sassoon) said that the maximum temperature and humidity in the House during last week were 75° F and 84 per cent, also that consideration was being given to a scheme for the better ventilation of the House

House of Commons (Tipping of Waiters).—On December 13⁵ a Member asked the Chairman of the Kitchen Committee (Sir J Ganzoni) if he was aware that the waiters employed in the House received a weekly wage of 31s 6d plus tips, and whether arrangements could now be made for the waiters to be paid a regular and reasonable wage and tipping be abolished? The Chairman replied that the Committee was in sympathy with the suggestion, but as wages at present absorbed 34·68 per cent of the total receipts he regretted it was not possible to abolish the system, unless hon Members were willing to provide for the increased wage cost by agreeing to the addition of a fixed percentage on their bills. In reply to a supplementary question by another Member, the Chairman said the wage addition required to cause the staff to agree to the abolition of the tipping system would amount to £3,000 p a.⁶

¹ See also JOURNAL, Vol V, 27

² 326 *Ib*, 1771

³ 330 H C Deb. 5. s. 978, 979

⁴ 325 H C Deb 5 s 18, 19.

⁵ *Ib*, 1996

⁶ See p 32 *ante*.

Canada (Succession to the Throne Bill).¹—The passing of this Bill was referred to in Article II of the last issue of the JOURNAL.² The Bill, which opens with a preamble in which is recited the second paragraph of the Statute of Westminster, contains one clause, which reads

ASSENT TO ALTERATION IN THE LAW TOUCHING
SUCCESSION TO THE THRONE

1 The alteration in the law touching the succession to the Throne set forth in the Act of the Parliament of the United Kingdom intituled "His Majesty's Declaration of Abdication Act, 1936," is hereby assented to

Schedule One of the Bill sets forth the Instrument of Abdication,³ and Schedule Two recites the Imperial Act (1 Edw. VIII, c 3)

Upon moving the Second Reading of the Bill in the Senate, the Senator in charge of the Measure (Hon. Mr. Durand) said⁴

The purpose of this Bill is to secure the assent of the Parliament of Canada to the alteration in the law touching the succession to the Throne set forth in the Act of Parliament of the United Kingdom. To make clear exactly what is intended by the provisions of His Majesty's Declaration of Abdication Act I will read to the House what was said at Westminster by the Prime Minister of the United Kingdom in the Second Reading of the Bill.⁵

* * * * *

Accordingly the Dominion Government passed an Order in Council⁶ delegating its powers to the Imperial Government and requesting the Imperial Parliament to pass the legislation in order that the sovereignty of George VI should be declared as well in Canada as in the British Isles. This was done and, as will be seen by the British Act, the Dominion joins with Great Britain in its enactments

* * * * *

Now the question has arisen whether the Canadian Government having given that consent, it is necessary for the Dominion Parliament to pass supplementary legislation. It is necessary in order to comply with the express terms of the preamble of the Statute of Westminster.

* * * * *

As will be observed, the scope of this Bill is limited to subsection (2) of section 1 of the British Act which affects the order

¹ 1 Geo VI, c 16

² See JOURNAL, Vol V, 66 n.

³ See JOURNAL, Vol V, Art. II.

⁴ P 69 n

⁵ Can Sen. Deb No 3, 33-34.

⁶ December 10, 1936.

of succession. It has been objected that this legislation is superfluous. I think we owe it to the declaration of the Statute of Westminster to assert our right to have the Parliament of Canada enact this Measure.

During the debate, the hon. Senator (Rt. Hon. A. Meighen) made the following observations:¹

Now while I do not oppose the Measure, I want to place upon the records of the House my views as to the correctness of the procedure which has been followed. I am afraid the Government, or perhaps, to put the blame just where it belongs, the law officers of the Crown, did not give the subject that close, attentive thinking which it merited. In my opinion there is no need of this Bill at all. I know the Government is in good faith in presenting it, and I intend to support it.

I listened carefully to the argument of the honourable leader of the Government in this House, who tried to convince us of the necessity of the Measure and based his contribution upon the Statute of Westminster. I know the Statute of Westminster is in effect. I never thought it really registered much of an advance, if any, and I have always been very doubtful of the wisdom of solidifying into words a constitutional position which has grown through the years, my own faith being that it would have been better left as it was, in the form of a constitutional established practice, than in the form of a definite and fixed Statute. But we have the Statute. Therefore it becomes us to see just what Canada should do in the presence of the Statute and the circumstances that surround it.

Canada (the Coronation Oath).²—On March 3,³ the following question was asked in the Canadian House of Commons:

1. What changes, if any, have been made in the Coronation Oath to be taken on May 12 next?

2. Was Canada consulted, and what reply was given?

3. Did the Government ask for any changes? If so, what are they?

4. Will any correspondence with His Majesty's Government of Great Britain and Canada on the subject be laid on the Table of the House?

To which the Prime Minister (Rt. Hon. Mackenzie King) made the following reply:

1. The Coronation Oath taken by His Majesty King George on June 22, 1911, was as follows:

"*Archbishop* Will you solemnly promise and swear to govern the people of this United Kingdom of Great Britain and Ireland, and the Dominions thereto belonging, according to the Statutes in Parliament agreed on, and the respective laws and customs of the same?"

¹ Can. Sen. Deb. 1937, 33.

² See also JOURNAL Vol. V, 34, 35.

³ CCXII, Can. Com. Deb. 1442, 1443.

King I solemnly promise so to do

Archbishop Will you to your power cause law and justice, in mercy, to be executed in all your judgments ?

King I will

Archbishop Will you to the utmost of your power maintain the laws of God, the true profession of the gospel, and the Protestant reformed religion established by law ? And will you maintain and preserve inviolably the settlement of the Church of England, and the doctrine, worship, discipline, and government thereof, as by law established in England ? And will you preserve unto the bishops and clergy of England, and to the churches there committed to their charge, all such rights and privileges, as by law do or shall appertain to them, or any of them ?

King All this I promise to do "

The Coronation Oath to be taken by His Majesty King George VI on May 12, 1937, is as follows

Q Will you solemnly promise and swear to govern the peoples of Great Britain, Ireland, Canada, Australia, New Zealand and the Union of South Africa, of your possessions and the other territories to any of them belonging or pertaining, and of your Empire of India, according to their respective laws and customs ?

A I solemnly promise so to do

Q Will you to your power cause law and justice, in mercy, to be executed in all your judgments ?

A I will

Q Will you to the utmost of your power maintain the laws of God and the true profession of the gospel ? Will you to the utmost of your power maintain in the United Kingdom the Protestant reformed religion established by law ? And will you maintain and preserve inviolably the settlement of the Church of England, and the doctrine, worship, discipline, and government thereof, as by law established in England ? And will you preserve unto the bishops and clergy of England, and to the churches there committed to their charge, all such rights and privileges as by law do or shall appertain to them, or any of them ?

A All this I promise to do

In view of Press reports, it may be added that the King's Title, which was settled by proclamation issued under the Royal and Parliamentary Titles Act of 1927, does not appear in the form of Coronation Service, and has not been changed in any way

2 The Canadian Government was consulted and concurred in the changes applicable to Canada

3 The Canadian Government did not initiate the question but expressed the view that the phrasing of the first section of the oath as formerly administered was not in accordance with the existing constitutional relations, and that it would be appropriate that each of the members of the Commonwealth should be enumerated

4 It would not be in accordance with established practice to Table the correspondence, which indicates the views of other Governments.

Canada (Elections and Franchise).—On February 2¹ the following Motion was moved by the Minister of Justice (Hon Ernest Lapointe) and agreed to:

That the special committee appointed to study the Dominion Elections Act, 1934, and amendments thereto, and the Dominion Franchise Act, 1934, and amendments thereto, be instructed to study and make report on the methods used to effect a redistribution of electoral districts in Canada and in other countries and to make suggestions to the House in connection therewith.

The First Report of the Committee was tabled on the following day, and agreed to ² On April 6³ the Second Report was presented, but on April 10⁴ it was decided to print only the Report and evidence. The Report, however, presents many interesting features and is therefore given as it appeared in the Commons debates as follows

The Special Committee on Elections and Franchise Acts begs leave to present the following as its second and final report. Your Committee has held eighteen meetings for the purpose of studying the matters referred to it under orders of reference of January 26, and February 2, 1937, as follows:

- (a) The proportional representation system
- (b) The alternative vote in single member constituencies.
- (c) Compulsory registration of voters
- (d) Compulsory voting.

Your committee has also made a study of the Dominion Elections Act, 1934, with amendments thereto, and the Dominion Franchise Act, 1934, with amendments thereto, as instructed in the order of reference of January 26, 1937

Every suggestion received by your committee since the 1935 election, whether from Members of Parliament, election officers, franchise officers, political and other organizations or private individuals, and whether received in writing or by personal representation, was carefully considered by your committee. All witnesses who expressed a wish to be heard by your committee were duly heard and their representations given all possible consideration.

Your committee wishes to confirm their fourth and final report of 1936, a copy of which is hereto attached, with respect to:

- (a) The proportional representation system,
- (b) The alternative vote in single member constituencies.

Your committee has also considered compulsory registration and compulsory voting and has decided that it cannot recommend either to the favourable consideration of the House. With regard to the former it is of the opinion that it could not be enforced

¹ CCXI, Can Com Deb 464, 465.

³ CCXIII, *Ib*, 2638-2640.

² *Ib*, 531

⁴ *Ib*, 2891-2892

without continuous registration, a large staff of permanent officials, an annual house-to-house check-up of the names of the electors on the lists, and by other means, and your committee believes that the cost would be prohibitive under such circumstances. With regard to compulsory voting your committee has carefully considered the evidence submitted and in view of the high percentage of electors who voted in Canada at the last two general elections, and of the doubtful value of compelling unwilling electors to cast their votes, together with the probable additional cost, has concluded that it would be inadvisable to adopt that system in Canada at this time.

Your committee is unanimously of the opinion that the system of the annual revision of lists of electors, as provided in the Dominion Franchise Act, 1934, has proved unsatisfactory. Experience has shown that the basic lists prepared in 1934 were almost obsolete within six months after they were completed, and that the annual revision held in the year 1935 was not adequate to remedy the situation. The conclusion arrived at is that the yearly revision under the provisions of the Dominion Franchise Act, 1934, could not produce satisfactory results, and that only through voluntary efforts on the part of Members of Parliament, candidates and political organizations, involving great cost in time and money, could the lists of electors be brought up to date and thoroughly purged. Your committee is unanimously of the opinion that it would be advisable to return to the system of preparation and revision of the lists of electors immediately after the issue of the writs of election, with closed lists in urban polls, and open lists in rural polls, as in 1930.

Your committee recommends that the Dominion Franchise Act, 1934, be repealed, and the provisions relating to the preparation and revision of the lists of electors be again embodied in the Dominion Elections Act.

Your committee recommends that the particular sections in the Dominion Elections Act providing for absentee voting should be repealed. The intricacy of the procedure, the large number of rejected ballots, and the excessive cost to the country, have convinced your committee that it would be unwise to continue this manner of voting. Furthermore, with the adoption of the 1930 procedure, your committee is of the opinion that absentee voting will no longer be necessary.

A suggestion was made to your committee that publication of election returns from east to west throughout Canada should be synchronized, or hours of polling should vary. It was represented that election returns from the maritime provinces were being received in the western provinces, from one to three hours before the close of the polls in the latter provinces, and that undue influence was consequently exercised upon late voters, by radio broadcasts and by the publication of early returns in extra editions of newspapers in the west. On account of objections raised to every remedy proposed, your committee has decided that the matter should be brought to the attention of Parliament in order that it may be further considered. Special reference should be made to a suggestion approved by

your committee to the effect that a revision of the Dominion Elections Act, embodying the recommendations made, together with such further amendments as may be found necessary be prepared for submission to Parliament at its next session. This is deemed necessary in order that election officers may have ample time to perform all preliminary work well in advance of the next general election.

Your committee also gave careful consideration to many other suggestions that were received but not adopted. These suggestions are all contained in the minutes of proceedings and evidence, and your committee did not deem it necessary to enumerate them in this report.

Your committee has received representations from Canadian citizens of Japanese origin, asking that the privilege of the franchise be extended to them, but your committee is not prepared to recommend any alteration of the existing law.

Your committee herewith submits for the favourable consideration of the House the complete list of suggestions which it has approved, as follows:

- 1 That instead of having a permanent list of electors and an annual revision, the procedure followed in 1930, in the preparation and revision of the list of electors after the issue of the writ for an election, should be again adopted.
- 2 That the Dominion Franchise Act should be repealed and the franchise provisions embodied in the Dominion Elections Act, as in 1930.
- 3 That a longer period of time should be given to the various returning officers to revise the arrangement of polling divisions of their respective electoral districts, and with that purpose in view the proposed new Dominion Elections Act should be passed not later than the year 1938.
- 4 That all incorporated cities or towns having a population of 3,500 persons or more be treated as urban polling divisions.
- 5 That the chief electoral officer be empowered to declare urban any area in which the population is of a floating or transient character or in which a large number of persons are temporarily employed on special work of any kind.
- 6 That absentee voting be abolished.
- 7 That, where possible, all lists of electors for both urban and rural divisions be printed.
- 8 That a method of speedy payment of election officers receiving a fixed fee be adopted.
- 9 That enumerators shall insert on their lists of electors the names of young persons who will attain 21 years of age on or before polling day.
- 10 That voters' lists be printed locally wherever and whenever possible.
- 11 That, in urban areas, a printed copy of the list of electors be sent by mail as soon as the printing is completed to each dwelling situated within the appropriate polling division, and a notice advising electors of the time and place of the sittings of the revising officers and of the location of the polling stations be printed on each such copy of the list.

- 12 That the sending of a notification post card advising each elector as to time and place of poll be abandoned
- 13 That the list of electors for rural polling divisions be "open lists" as in 1930
- 14 That all election officers should be qualified as electors in their respective electoral districts.
- 15 That the use of radio for election speeches on polling day and on the Sunday immediately preceding it should be prohibited
- 16 That all electors in line at the door of the polling station awaiting their turn to vote at the hour provided for the closing of the poll shall be permitted to cast their votes before the outer door of the poll is closed
- 17 That no list of electors shall be split up for the taking of the vote unless it contains more than 350 names
- 18 That printed lists of electors in urban polling divisions, containing more than 350 names, should, for the taking of the vote, be divided numerically instead of geographically
19. That the names of teachers, students and clergymen shall be placed on lists of electors for polling divisions to which they have recently moved, as in 1930
- 20 That the returning officer should be directed that either he or the election clerk should remain in the returning officer's office throughout the whole of polling day
- 21 That in rural polling divisions only one day be fixed for the correction of the lists of electors by rural enumerators, instead of three days as was the case in 1930
22. That no entry should be made in the poll book until the poll clerk has ascertained that the name of the elector appears on the official list of electors used at the polling station, or is otherwise entitled to vote
- 23 That the election clerk should be authorized to issue transfer certificates on behalf and in the name of the returning officer
24. That a record of all transfer certificates issued be kept by the returning officer or the election clerk.
- 25 That, when a candidate withdraws after nomination, and after the ballots have been printed, the election officer should notify all electors of such withdrawal in the most effective manner possible.
- 26 That a penalty clause be inserted in the Act for employers who refuse to grant, or who interfere in any way with the granting of, two additional hours to their employees for voting
- 27 That the use of the official stamp be discontinued, and a printed impression from an electro or printer's block be substituted therefor, on the back of the ballot paper
- 28 That candidates' agents shall not be allowed to vote on a transfer certificate until after they have subscribed to both the oath in form 17, and form 22
- 29 That flags, bunting and loud speakers on cars and trucks and other vehicles should be prohibited on election day
- 30 That candidates' agents should, to a reasonable extent, be permitted by law to absent themselves from, and to return to, the polling station at which they are acting.
- 31 That after the words "shall publish" in section 63, sub-

section 5 of the Act, the words " in the form prescribed by the Chief Electoral Officer," should be inserted

32 That the statement of the poll in form 31 and the certificate of the votes polled in form 32 should be prepared on similar forms, preferably form 31

33 That the letter " W " should not be used in the description of women's names on the list of electors

Owing to the shortness of the session, your committee has been unable to complete its study of the methods used to effect redistribution of electoral districts in Canada and other countries, and the evidence at present before it does not warrant a final report thereon. Your committee therefore suggests that this subject be further considered during the next session of Parliament

Your committee wishes to express its appreciation of the assistance and advice received at all times from the Chief Electoral Officer and the Dominion Franchise Commissioner, as well as from the counsel to the committee. Mr. Butcher has made an exhaustive study of all phases of franchise, election and redistribution legislation of other parts of the Empire and of other countries, the laws of which might afford information valuable to the committee. The result of his study will be found in the minutes of proceedings and evidence. Your committee therefore endorses the action of the Government in furnishing counsel.

Your committee further recommends that the evidence taken, together with an index, be printed as an appendix to the Journals of the House. A copy of the minutes of proceedings and evidence taken by the committee is attached hereto.

Canada (Broadcasting of House of Commons Debates).—

On March 3¹ a question was asked as to what would be the annual cost of broadcasting the debates from the short wave station at Ottawa, and if the Government has given consideration to the desirability of such broadcasting. The Prime Minister (Rt. Hon. Mackenzie King) replied that the Government did not think it advisable to broadcast the debates of the House.

Province of Saskatchewan.—In regard to the question of the relations between the Central Legislature and those of the States or Provinces (a burning problem certainly in two of our Dominions), an official publication of the Province of Saskatchewan, prepared under the direction of its Attorney-General (Hon. T. C. Davis, K.C.), and printed by the King's Printer, Regina, Sask., will prove of interest. It is a most comprehensive treatment of the subject from the Province's point of view, and covers 434 pages with ample statistics. The book is divided into 13 parts, with Appendix A and B.

¹ CCXII, Can. Com. Deb. 1442.

and an index of tables as well as a general index. Parts I to XII deal with such subjects as Canada and the Provinces under the B N A Act; Public Finance; Provincial taxation; Economy; Social services; etc.

Part XIII, which contains the recommendations, includes the suggested Constitutional amendments, which are as follows.

The Public Debt of the Province —The Government feels that careful consideration should be given to the problem of refunding and consolidating the public debt of the Province. The Government is not in favour of compulsory refunding which involves repudiation, but would be prepared to support a proposal which would give the holder of any bond of the Province the right to elect whether he would take a new bond for an extended term at a lower rate of interest, or in lieu thereof accept payment of the face amount of his bond in cash. As to repudiation it is felt that a Government which will not attempt to keep faith with its creditors cannot be trusted to keep faith with its people.

Any such scheme would necessitate definite sinking fund provisions to retire the new bonds at maturity. The proposal would also of necessity involve assistance from the Federal Government to procure the funds necessary to retire the bonds of such holders as might elect to take their money instead of new debentures.

The Government feels that little relief would be secured if the consolidated bonds bore interest in excess of three and one-half per cent. In the alternative, the Government feels that some provision might be made for refunding its maturities as they come due to lower rates of interest. The Government is definitely of the opinion that it cannot meet its existing obligations unless its fiscal position is greatly improved. Measures looking to such improvement will be proposed in the following recommendations.

It is specifically recommended that the portion of the public debt of Saskatchewan attributable to the payment of direct relief shall be regarded as having been incurred in the discharge of a national obligation, and that responsibility for the retirement of this portion of the debt shall be assumed by the Dominion of Canada.

Adjustment of the National Economy —Three recommendations will be made under this heading, and the Government of Saskatchewan desires to point out that as respects the first of these the need for adjustment is absolutely imperative if

the economic life of this Province is to develop in a satisfactory manner.

(1) That the customs tariff shall be completely removed from all instruments of production and shall be drastically reduced on all necessities of life.

(2) That the provision of transportation facilities shall be considered from a national point of view and that the freight rates structure of the railways shall be examined with a view to giving some relief to the exporters of primary products from Western Canada

(3) That the Government of Canada shall construct and maintain a trans-Canada highway of a permanent type as well as permanent highways from the Canada-United States border to the several national parks of Canada

Social Services —The Government of Saskatchewan is of the opinion that several satisfactory adjustments may be made under this head. The following specific recommendations are made

(1) That entire responsibility of old-age pension payments shall be assumed by the Dominion of Canada.

(2) That a national scheme of unemployment insurance shall be enacted forthwith by the Dominion Parliament. It is suggested that such scheme should be of a contributory nature

(3) That consideration should be given to the enactment of a national scheme of crop insurance by the Dominion of Canada. In the alternative that special assistance shall be given to the Province of Saskatchewan in connection with the administration of a provincial scheme of crop insurance in case it should be decided that such a scheme is feasible. On the one hand, it may be pointed out that a national scheme of unemployment insurance will be of less assistance to the Province of Saskatchewan than to the other Provinces, while, on the other hand, it is fairly obvious that Saskatchewan has greater need for a scheme of this character than has any other Province of Canada

(4) That such matters as minimum wages, hours of labour, periods of rest and generally all matters pertaining to labour shall be dealt with by the Parliament of Canada under a national policy in that regard.

(5) That the burden of direct relief shall be definitely assumed by the Dominion of Canada as a social service of national concern.

(6) That consideration should be given to the enactment

of a national scheme of health insurance by the Dominion of Canada

(7) That consideration should be given to a plan for the payment of pensions to all persons who have reached the age of sixty-five years, regardless of financial need. Said pensions to have been contributed to by the recipients during their earning years.

(8) That consideration should be given to the amendment of the introductory portion of section 91 of the British North America Act in such a manner as to give complete power to the Parliament of Canada to deal with any social services as it shall see fit

Taxation—(1) That the levying of succession duties, using that term in its widest significance, shall be assigned exclusively to the Dominion of Canada and that the moneys derived from the collection of such duties shall be paid to the Provinces on an equitable basis. It is further proposed that the income tax field, including a tax upon the incomes of corporations, should be similarly reserved to the Dominion Parliament.

(2) That the Provinces of Canada should be given powers of indirect taxation

(3) That consideration should be given to the constitutional handicap under which the Province of Saskatchewan operates in the matter of the taxation of railways

Subsidies—(1) That the unconditional subsidy presently payable by the Dominion of Canada to the Province of Saskatchewan should be increased. It is impossible to indicate the amount of the necessary increase in the absence of knowledge concerning the extent to which the other recommendations submitted herewith will be accepted. It is suggested, however, that this matter must be determined on the basis of the fiscal need of the Province as indicated by the material which appears in this submission, or which may otherwise be brought to the attention of the Commission

(2) That a permanent Grants Commission shall be established forthwith with duties as set out in earlier parts of this submission

Provincial Powers—In addition to matters mentioned above it is suggested that the powers of the Provinces should be enlarged so as to enable them to deal effectively with companies incorporated by the Dominion of Canada. Such enlarged powers would enable the Provinces to deal more effectively with such companies in the matter of taxation as well as in the prevention of security frauds.

Constitutional Amendments—In the opinion of the Government of Saskatchewan the British North America Act should be amended in several particulars. The following recommendations are hereby suggested. The recommendations are made under several heads and a measure of overlapping is involved.

I That such amendments be made as will permit the carrying out of the recommendations contained in the earlier portions of the present Part (XIII) of this submission

II That an amendment be procured that will definitely establish a national status for the Dominion of Canada including effective treaty-making capacity. It is suggested that this be done by the amendment of section 132 of the British North America Act.

III That the constitutional powers of the Dominion of Canada to deal with several matters be made certain. It is suggested that this end be achieved by amendments (in the form of additions) to section 91 of the British North America Act. It is proposed that the enlargement of Dominion powers shall extend to the following matters

(1) The granting of money raised by taxation or otherwise to any Province or Provinces to be used for Provincial Purposes

(2) Unemployment insurance.

(3) Health insurance

(4) Crop insurance

(5) Conciliation and arbitration for the prevention and settlement of industrial disputes, and compulsory settlement of such disputes

(6) Invalid and old-age pensions

(7) Regulation of labour conditions, and, without restricting the generality of this power, regulation in particular of the following matters, namely

(a) the right of association for all lawful purposes by the employed as well as by the employers,

(b) the payment to the employed of a minimum wage adequate to maintain a reasonable standard of life;

(c) the determination of maximum daily or weekly hours of labour,

(d) the adoption of a weekly or other periodic rest period,

(e) the abolition of child labour and the imposition of limitations on the labour of young persons, and

(f) prescribing systems of inspection to ensure the enforcement of laws and regulations for the protection of the employed

IV It is deemed essential that the powers of the Province should be enlarged in certain particulars. The following recommendations are respectfully suggested

(1) That head 2 of section 92 of the British North America Act be repealed and the following substituted therefor

" (2) The raising of money by any mode or system of taxation within the Province, not including the impositions known as Customs and Excise, but inclusive of the taxation of companies authorized to carry on business in Canada by reference to the amount of gross or net revenues received by such companies from persons resident within the Province "

(2) That, the Provinces be given the necessary powers to deal with Dominion companies as already suggested.

V Co-operation between the Dominion and a Province

In order that co-operation may be made possible, especially when consent to a constitutional amendment cannot be obtained, and in order that uncertainties be removed from the law in this regard, it is proposed that powers shall be given to the legislatures of the Provinces touching the following.

(1) Incorporation in the statute law of any Province of any enactment passed by the Parliament of Canada by reference to such enactment to the extent to which the subject-matter of such enactment is within the legislative competence of the Province

(2) Delegation to the Parliament of Canada of legislative jurisdiction with respect to any subject-matter otherwise within the exclusive legislative jurisdiction of the Provinces

It is further proposed that the Parliament of Canada shall be endowed with reciprocal powers in this regard. It should be pointed out that these suggested amendments will in no sense involve a surrender of sovereignty

These representations and recommendations were respectfully submitted by the Government of Saskatchewan to the Royal Commission on Dominion-Provincial Relations

Similar briefs to the above were submitted to the Royal Commission on Dominion-Provincial Relations (referred to in Article VII of this Volume) by the Provinces of Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island and Alberta. The Province of Ontario, however, did not submit a brief, and the Province of Alberta, while it did not submit a brief directly to the Commission, did submit "The Case for Alberta to the Sovereign People of Canada and their Governments". It is understood that the Chamber of Commerce at Edmonton, Alberta, submitted a brief of their own to the Commission

W. R. Alexander, C.B.E., J.P.—Mr Alexander, who held the dual office of Clerk of the Legislative Assembly and Clerk of the Parliaments of the State of Victoria, retired in July after

a service of 48 years. On the 27th of that month,¹ the Premier and Treasurer of that State (Hon. A. A. Dunstan), when moving, in the Legislative Assembly, the following Motion:

That this House places on record its high appreciation of the valuable services rendered to it and to the State of Victoria by William Robert Alexander, Esquire, C.B.E., J.P., as Clerk of the Parliaments and Clerk of the Legislative Assembly, and in the many other important offices held by him during his forty-eight years of public service, of which forty-one years were spent as an officer of Parliament, and its acknowledgment of the zeal, ability, and courtesy uniformly displayed by him in the discharge of his duties,

referred to the splendid services rendered by Mr. Alexander by whose retirement they were losing not only a most capable, remarkably efficient and very conscientious officer, but a good and faithful friend, whose advice and assistance had been at the disposal of all. Mr. Alexander had been most obliging and most courteous to all, and he had been extremely fair and impartial in his judgments. In his very long and very meritorious career he had solved, or helped to solve, many knotty problems that had arisen. The Prime Minister was sure that all hon. Members would regret exceedingly his retirement, not only because of his outstanding qualifications, but also because of his personal charm.

Sir Stanley Argyle, Leader of the Opposition, in seconding the Motion, supported the remarks of the Premier and said that Mr. Alexander had always been a friend to every Member of the House who was in difficulties over matters of procedure and had always been ready, at great personal sacrifice at times, to assist any Member of any party at any time. Mr. Alexander would always be able to look back, after he had laid down the reins of his office, with the knowledge that he possessed the good will, friendship, and respect of every Member of that House who was then in it or had been in the House during that period.

The Speaker (Hon. W. H. Everard) then said

Before putting the Motion, I should like to add my tribute to those already expressed by Honourable Members. I owe a deep debt of gratitude to Mr. Alexander. I look on him as a walking encyclopedia of parliamentary law and practice, and consider that he is a perfect officer. Though his retirement we lose one who has made many friends and is held in the highest esteem, not only in this Chamber, but in all parts of the State. He has been wonderfully efficient in what might be

¹ No. 4, Vict. Parl. Deb. 1937, 263-266

described as the routine part of his duties, and he is also fully qualified to talk plainly on the subject of the principles of parliamentary practice. Even when we have been feeling the strain of all-night sittings, Mr. Alexander has never lost his remarkable charm of manner. I really think that no words of mine can better express my sentiments than the Motion by the Premier, which I now submit to the House.

The motion was agreed to unanimously. •

The Speaker then continued: As it is not in accordance with parliamentary practice for the Clerk to address the House personally, Mr. Alexander has addressed the following letter to me

LEGISLATIVE ASSEMBLY, VICTORIA,
PARLIAMENT HOUSE,
MELBOURNE

July 27th, 1937

DEAR MR. SPEAKER,

I beg to tender to you, and through you to the Members of this honourable House, my sincere thanks for the Resolution in appreciation of my humble services which the Assembly has been so good as to pass on the occasion of my retirement.

In saying farewell to the House may I be permitted to express to you, Sir, and to all Honourable Members my grateful sense of the unvarying kindness, consideration, and appreciation which I have received during the 35 years I have been connected with the Table.

The pride I feel in having attained to the high and honourable offices of Clerk of the Parliaments and Clerk of the Legislative Assembly, will endure for the remainder of my life.

I am, Dear Mr. Speaker,
Your obedient servant,
W R ALEXANDER.

We should also like to add our tribute to Mr. Alexander upon his retirement and to express our warm appreciation of his ardent, able and devoted services as a valuable, esteemed and active member of our Society.

On the following day,¹ Mr. Speaker announced that "in accordance with the powers vested in me," he had nominated Mr. F. E. Wanke, the Clerk of the Committees and Sergeant-at-Arms, as Clerk of the Legislative Assembly in place of Mr. Alexander, retired, and Mr. H. K. McLachlan, the Clerk of the Papers, in the place from which Mr. Wanke was promoted; and that the Governor-in-Council had been pleased

¹ *Ib.*, 310.

to make appointments in accordance with the said nominations. The office of Clerk of the Parliaments will now be held by Mr P T Pook, B.A., LL M, J P., the Clerk of the Legislative Council.

Victoria (Constitutional Amendment).—During the year under review in this Volume an amendment was made to the Constitution of this State by the passage of the Constitution (Reform) Act, 1937,¹ which, to quote from the short title section, is to be read and construed as one with the Constitution Act Amendment Act, 1928 (referred to in Act No. 4533 as the Principal Act) and any Act amending the same, all of which are cited as the Constitution Act Amendment Acts.² The long title of the new Act reads:

An Act to make provision with respect to the relations between the two Houses of Parliament and for other purposes.

The Act was Reserved by the Governor, December 24, and the Royal Assent, the Proclamation promulgating the Act, appeared in the Victoria Government Gazette of March 30, 1938.

Deadlocks between Houses—Section 2 of the new Act substitutes for the practice laid down in section 37 of the Constitution Amendment Act, 1928, the following procedure:

If the Assembly pass a Bill and the Council rejects it, the Assembly may be dissolved by a proclamation declaring such dissolution to be granted in consequence of a disagreement between the two Houses upon the Bill. Provided that the Assembly shall not be so dissolved later than 6 months before the date of the expiry of the Assembly by effluxion of time.

If the Assembly in the next Session (but not earlier than 9 months after the date of the Second Reading of the Bill in the Assembly in the preceding Session) again passes the Bill and the Council again rejects it the Council may be dissolved. Provided that the Council shall not be dissolved within 1 month after the Bill has been last rejected by the Council or within 9 months after any general or periodical election therefor.

If in the same or the next succeeding Session the Assembly again passes the Bill and the Council again rejects it, the Governor may convene a Joint Sitting of the two

¹ No. 4533

² Nos 3660, 4278, 4305, 4334, 4350, 4367, 4409 and 4468.

Houses, when it may, by an absolute majority of the total number of Members of both Houses, amend the Bill, and if the Bill so amended or without amendment is affirmed by such an absolute majority it is deemed to have been duly passed by both Houses and is presented for Royal Assent.

Exemptions to the above are a Bill to abolish the Council or to alter Schedule D to the Constitution Act or to amend or repeal these new provisions

Appropriation Bills.—Section 3 provides that the annual Appropriation Bill shall deal only with appropriation.

Absolute Majorities—Section 4 requires that a Bill to alter the constitution of the Council or the Assembly or Schedule D to the Constitution Act shall not be presented for the Royal Assent unless the Second and Third Readings of such Bill have been passed by an absolute majority in the Council and in the Assembly. This provision was inserted because a similar provision in section 60 of the Constitution Act has been interpreted to apply only to Bills amending the Constitution Act and not to Bills amending an amendment of the Constitution Act.

Qualification of Candidates for the Legislative Council—Section 5 reduces the age qualification of candidates for the Legislative Council from 30 to 21 years and the property qualification from £50 net annual value to £25 net annual value.

Candidate's Deposit.—Section 6 reduces the deposit to be lodged on nomination of a candidate for the Legislative Council from £100 to £50.

Plural Voting Abolished and Compulsory Voting Provision Modified—Sections 7 and 8. Hitherto, an elector for the Council was compelled to vote for the Province in which he resides, but he could also vote for any other Province or Provinces for which he was enrolled if he attended personally in such Province or Provinces on Polling Day. Under sections 7 and 8 of the new Act, however, an elector for the Council is compelled to vote only for one Province, but if he is enrolled for more than one Province he may choose to vote either in the Province in which he resides or, if he gives notice to the Chief Electoral Officer at least 7 days before Polling Day, in any one other Province for which he is enrolled.

There was considerable debate upon the old Bill for this Act, both in the Legislative Council and in the Legislative Assembly, as reference to the Parliamentary Debates will shew. The question for the Third Reading, however, was passed by an absolute majority of the Legislative Assembly, as required by the Constitution Act, the pairs being also shewn under the division list in the Parliamentary Debates.

Conference—The Legislative Council requested a Free Conference with the Legislative Assembly for which the following Motion was moved ¹

That a free conference be devised with the Legislative Assembly on the subject of the relations between the two Houses and the provisions contained in the Constitution (Reform) Bill,

and when agreed to, a Resolution was passed appointing a certain seven named Members to represent that House, which action was communicated to the other House by Message. To this proposal the Legislative Assembly by Message agreed, intimating that it "had appointed seven Members to confer with a like number of Members of the Legislative Council" and named the Legislative Council Committee Room as the place and "3 30 p.m. to-morrow" as the time of meeting of the Conference.

The Clerk of the Parliaments, however, also reports that it was contended that this request was quite unusual, if not unprecedented, in that it was made before a dispute as to the Bill had arisen between the two Houses—that is, before the Bill had been read a third time and passed with amendments; but it should be noted that the subject-matter of the Conference was stated quite generally and did not refer to amendments or to a dispute, though, of course, it may be said that if a dispute had not arisen it would have been more correct to have proceeded by a Joint Select Committee than by Free Conference. However, before the Assembly considered the Council's Message requesting a Conference the Bill had been read a third time, passed by the Council and returned to the Assembly with amendments ²

The Assembly then agreed to the Conference which was held without agreement being arrived at³ by that method, although agreement between the two Houses was subsequently effected by the transmission of Messages between the two Houses.

The Clerk of the Parliament also observes that the reason

¹ No 5-1937 Vict Parl. Deb 741-743

² No 6-1937 Vict Parl Deb 787-788.

³ *Ib.*, 1009, 1053 for Manager's Report.

stated in debate for requesting a Conference before the Bill was read a third time was to ensure that the Assembly would grant the request for a Conference and thus enable the Council to learn the probable fate of the amendments before deciding the Third Reading of the Bill ¹

When the Government promised that the Conference would take place the Council passed the Third Reading and returned the Bill to the Assembly, so that when the Conference took place the Bill was not in the possession of the House which asked for the Conference ²

Victoria (Parliamentary Debates).—During the year under review an Act was passed by the Parliament of this State, adding to section 43 of the Constitution Act Amendment Act, 1928, a provision by which the Government Printer shall always be deemed to have been authorized by each House of Parliament to publish their debates, and in relation to section 44 (3) of such Constitution Act, it is provided that any reference to the publication of proceedings of either House shall be deemed to include the reports of their debates.

Queensland (Ministerial and M.P.'s Salaries).—As and from July 1, 1936, the following are now the salaries of Ministers and Members of Parliament Premier and Chief Secretary, £1,450; other Ministers, £1,150, Speaker, £1,150; Chairman of Committees and Leader of the Opposition, £850, and other Members, £650, thus shewing an increase of £150 *p a.* in each class

South Australia (Constitutional Amendment).—During the year under review in this Volume the Constitution Act Amendment Act³ was passed which provides for the extension of the duration of the House of Assembly from 3 to 5 years. The original Constitution Act of 1855-56 provided for a normal term of 3 years for the Assembly and 12 years for the Legislative Council. In 1881 the term in the Council was reduced to 9 years, and in 1908 to 6 years, half the Members normally retiring every 3 years. The effect of the Amending Act of 1937 is that the term of the Legislative Council is automatically extended to 10 years, half the Members normally retiring every 5 years

The Constitution Amendment Act of 1934 extended the term of the then House of Assembly for 2 years but applied to the existing Parliament only.

¹ No 5-1937 Vict. Parl Deb 742 and 788

² *Ib*, 787

³ No. 2381 (1 Geo. VI) Reserved December 8, Royal Assent proclaimed, March 30, 1938.

The 1937 Act provides also for the establishment of a Joint Standing Committee to which all Rules, Regulations, By-laws and Orders made pursuant to any Act shall be submitted for report to Parliament

The Electoral Act Amendment Act, 1937, includes a small amendment of the original code in regard to the provision for names of candidates at an election to be placed on the ballot-paper alphabetically. This is amended to allow the order of names within groups to be other than alphabetical, the position of the groups only being governed by the previous rule. The provision for voting by post when outside an Assembly district or Council division is repealed in favour of the right to vote as an absent voter at any polling-place within the State instead of only at another polling-place within the district or division.

Western Australia (Constitutional).—An Act¹ was passed by the State Parliament of Western Australia during the year under review, amending the Constitution² of this State in regard to the powers and relationship between the two Houses upon Money Bills, which are defined by section 2 very much on the lines of section 1 (2) of the Parliament Act³ of the United Kingdom. Section 2 also defines "Representative Vote" as meaning:

a vote of the Members of either the Legislative Assembly or Legislative Council, or of a joint sitting thereof whereat each Member is allowed a number of votes equal to the number of persons enrolled at the date of the last preceding general election of members of the Legislative Assembly or Legislative Council respectively for the district or Province he represents

Section 2 of the principal Act² was amended by adding a new section, 2A, paragraph (1), which provides that if a Legislative Assembly Bill is rejected by the Legislative Council, the President thereof may and shall, at the request of the Speaker of the Legislative Assembly, convene a joint sitting of the two Houses and submit to the vote of the Members there present such Bill in the form in which the Council so received it, and that if there was a majority upon a representative vote in favour of the Bill it shall be considered to have been passed by both Houses and presented to the Crown for assent.

Paragraph (11) of the new section enacts that if a Money Bill sent up to the Council by the Assembly at least one

¹ Constitution Acts Amendment Act, 1937.

² Constitution Act, 1889 (52 Vict. c. 23)

³ 1 & 2 Geo. V, c. 13

month before the end of the Session is not passed by the Council without amendment within one month after being so sent, the Assembly may by resolutions passed by a representative vote direct that the Bill be presented to the Crown for assent

Paragraph (iii) of the new section provides that if any Bill other than a Money Bill in same form is passed by the Assembly in two successive Sessions and sent to the Council at least one month before the end of the Session, is rejected by the Council in each of those Sessions, and the Bill in same form is again passed by the Assembly of the next succeeding Parliament, and having been again sent up to the Council at least one month before the end of the Session is again rejected by the Council, then the Assembly may by resolution passed by a representative vote direct that the Bill be presented to the Crown for assent

Paragraphs (iv) and (v) of the new section are the same as sections 2 (2) and 2 (3) of the Parliament Act, 1911, of the Imperial Parliament.

Paragraph (vi) of the new section also follows the Parliament Act in its section 2 (4) with the exception of the latter's proviso, and paragraph (viii) is equivalent to section 4 of such Act.

The late Clerk of the Parliaments of Western Australia, who was previously for many years Clerk of the Legislative Assembly, to whose record of service on his retirement a tribute was paid in our last Volume,¹ made a special study of the subject of the relationship between the two Houses in respect of Money Bills, and his "Memories of Parliament" contains many instructive and interesting references to this much debated question which are well worthy of study. We should like to take this opportunity, on behalf of our Society, of expressing our regret that Mr. Giant is now lying very seriously ill at his home at Cottisloe, Western Australia

Australian States (Air Navigation Acts).—Reference was made in the last Volume of the JOURNAL² to two important interpretations of the Commonwealth Constitution. In consequence of the rejection at the Referendum of the suggested aviation amendment and following a conference (to quote the preamble of the Air Navigation Act³ of Western Australia) of representatives of the Governments of the Commonwealth and of the States held in April, 1937, it was resolved that there should be uniform rules throughout the Commonwealth applying to air navigation and aircraft, and in particular to

¹ Pp. 11, 12.

² Vol V, 111-118

³ 1 Geo. VI (No. 6 of 1937).

the air-worthiness of aircraft, the licensing and competence of pilots, air traffic rules, and the regulation of aerodromes, and it was agreed that legislation should be introduced in the Parliament of each State to make provision for the application of the Commonwealth Air Navigation Regulations, as in force from time to time, to all navigation and aircraft within the jurisdiction of the State

The same Act was passed in four other States,¹ but the reference for New South Wales is not yet available

Tasmania (Constitutional Bills).—Two Bills of a constitutional nature were introduced into the Parliament of this State during the year under review, a Bill (No. 35) designed to remove the Legislative Council's powers in regard to Money Bills and to ensure in the case of other Bills that after rejection by the Council in three successive sessions the will of the House of Assembly shall prevail. However, the Bill which was introduced by the Government and passed through the Assembly in amended form was subsequently rejected by the Council, as was also a Bill (No. 75) proposing that Ministers from the House of Assembly could be in the Council when their presence was required to give Members information upon new and involved legislation. The records and other particulars received from the Clerk of the Legislative Council in regard to these two Bills will, however, be kept for reference should these measures become law.

New Zealand (Abdication of Edward VIII and Succession of George VI).—The following reference, which was not available at the time of the last Volume going to press, may be added to those appearing as footnotes to page 69 thereof

In connection with the Abdication of King Edward VIII and the Succession of King George VI to the Throne, the following Motion was moved in the Legislative Council² by the Leader of the Council, the Hon Mark Fagan (Minister without Portfolio), and by the Prime Minister (Rt Hon. M. J. Savage) in the House of Representatives,³ being preceded by the statement given below

Statement: It is necessary, in connection with the abdication of his former Majesty King Edward VIII, for the assent given by His Majesty's Government in New Zealand to the Act of the Parliament of the United Kingdom, intitled His Majesty's Declaration of Ab-

¹ Queensland, 1 Geo. VI, No. 8, S. Australia, No. 2352, 1 Geo. VI; Tasmania, 1 Geo. VI, No. 14, and Victoria, No. 4502, 1 Geo. VI

² 248 N. Z. Parl. Deb. 5

³ *Ib.*, 7.

dication Act, 1936, to be ratified and confirmed by the New Zealand Parliament

Motion Whereas in conformity with the provisions of the preamble to the Statute of Westminster, 1931, the assent of His Majesty's Government of the Dominion of New Zealand was duly given to the Act of the Parliament of the United Kingdom intituled His Majesty's Declaration of Abdication Act, 1936; and whereas it is desirable that the assent so given should be ratified and confirmed by Parliament; the assent given by His Majesty's Government in New Zealand to the Act of the Parliament of the United Kingdom intituled His Majesty's Declaration of Abdication Act, 1936, be and the same is hereby ratified and confirmed accordingly,

which Motion was agreed to in each House of the General Assembly.

Union of South Africa (Constitutional Amendment).—During the year under review, section 34 of the South Africa Act, 1909, was amended by the Electoral Quota Act,¹ which provides a new electoral quota for the Union which shall be obtained by dividing by 150² the total number of European adult Union nationals as ascertained at the census of 1936, and for this purpose both males and females are taken into account

Union of South Africa (Royal Assent to Bills).—In the Colony of the Cape of Good Hope (now one of the Provinces of the Union) Parliament it was always held that the Royal Assent to Bills "being the complement and perfection of a law" must be declared to both Houses of Parliament before prorogation and that if not so declared the Bill would drop like any other business pending at the time of prorogation³

The Royal Assent was consequently announced in both Houses to all Bills before prorogation and this practice was observed by the Union Parliament until the Session of 1915-16. In that Session, however, the Royal Assent to the Additional Loan Appropriation Bill was announced in the *Government Gazette* during a long adjournment without being declared to the two Houses, and since 1919 the Royal Assent to Bills passed towards the end of a Session has been published in

¹ No. 21 of 1937

² i.e., the number of Members composing the House of Assembly not including the 3 European Members representing the 3 Native divisions into which the Cape Province is divided. See JOURNAL, Vol. V, 35-39.

³ May, 13 Ed 43, 202, 203, 491. Hakewell, 179, 180.

the *Government Gazette* after prorogation without prior announcement to the two Houses. Owing to what was probably a misunderstanding the Royal Assent to every Bill passed during the 1937 Session was published in the *Gazette*, in some cases before and in some cases after prorogation, without announcement to the two Houses. In view of the wide terms of section 64¹ of the South Africa Act as amended by section 8 of the Status of the Union Act (No 69 of 1934) and of the Appellate Court decision referred to in Article IX hereof, it was not suggested that these measures were thus rendered invalid, but the principles involved are too sound and too well established to be set aside. It was therefore represented that, if only out of courtesy to the two Houses of Parliament, the Royal Assent should be announced to them before prorogation whenever possible.

South-West Africa (Constitutional).²—On April 22³ the Legislative Assembly passed a Resolution seeking the amendment of sections 26 and 27 of the S W A Constitution Act, 1925 (Union Act No 42 of 1925), by the addition of a proviso on the following lines:

Provided that, where an Ordinance deals only incidentally with any one of the reserved subjects herein specified, such Ordinance may be provisionally passed by the Assembly but shall be reserved for the consent of the Governor-General in terms of section 32.

It was considered that the amendment might avoid delay in passing measures in which provisions, as contemplated by sections 26 and 27, had been discovered while the House was in Session. The amendment of the Act, however, has not yet been effected by the Union Parliament.

South-West Africa (Remuneration to Members).—The remuneration to Members of the Legislative Assembly has been fixed by the Governor-General of the Union at £180 as from April 1, 1937.

¹ *1 e*, *Royal Assent to Bills*. 64. When a Bill is presented to the Governor-General for the King's assent he shall declare according to his discretion, but subject to the provisions of this Act, and to such instructions as may from time to time be given in that behalf by the King, that he assents in the King's name, or that he withholds assent. The Governor-General may return to the House in which it originated any Bill so presented to him and may transmit therewith any amendments which he may recommend, and the House may deal with the recommendation (9 Edw VII c 9).

² See also JOURNAL, Vols IV, 22-28, V, 42-48.

³ VOTES, No. 13 of 1937, 56.

Ireland (Eire) (Seanad Elections).—The composition of the Senate (Seanad Eireann) under the new Constitution was given in Volume V of the JOURNAL¹ and the character of the panels was indicated, but the Constitution did not prescribe the actual number to be elected from each panel, the manner in which they were to be formed, or the electorate by which selection is to be made from the panels. The Seanad Electoral (Panel Members) Act, 1937, now under review, provides for such selection as follows: 5 for the cultural and educational panel, 11 each for those of agriculture and labour, 9 for the industrial and commercial and 7 for the administrative panel. The character of the panels is described in greater detail in section 4 of the Act than in the Constitution itself. The remainder of Part I of the Act deals with preliminary and general matters, including power to the Minister to make Regulations thereunder. Part II provides for the registration of nominating bodies. Under section 21 of Part III, not less than two Members of Dáil Eireann may nominate a person for election to the Seanad, and no such Member may join in more than one such nomination. Any registered nominating body in respect of any particular panel is entitled to nominate to such panel the number of persons indicated below, and the several nominating bodies entitled to nominate persons to a particular panel may each nominate the same number of persons to such panel, which number is to be ascertained as follows:

- (a) if the number of nominating bodies entitled to nominate persons to such panel is not less than the number of members of Seanad Eireann to be elected from persons nominated to such panel by nominating bodies, each such nominating body shall be entitled to nominate two persons to such panel;
- (b) if the number of nominating bodies entitled to nominate as aforesaid is not less than one-half but is less than the whole of the number of members of Seanad Eireann to be elected as aforesaid, each such nominating body shall be entitled to nominate three persons to such panel;
- (c) if the number of nominating bodies entitled to nominate as aforesaid exceeds one but is less than one-half of the number of members of Seanad Eireann to be elected as aforesaid, each such nominating body shall be entitled to nominate four persons to such panel;

¹ Pp 162, 163.

- (d) if only one nominating body is entitled to nominate as aforesaid, such nominating body shall be entitled to nominate to such panel a number of persons equal to twice the number of members of Seanad Éireann to be elected as aforesaid.

Section 23 lays down the method of nomination by nominating bodies, and section 24 provides for the preparation of provisional panels. The method of nomination by Members of Dáil Éireann is that the nomination must be in writing with the required particulars and qualifications for the particular panel and signed by every one of the Members of Dáil Éireann making the nomination.¹

The Prime Minister (*Taoiseach*) is entitled to nominate not more than 2 persons to the administrative panel. An ex-Prime Minister or an ex-President of the Executive Council (other than the Prime Minister for the time being), or one who has held both these offices, is also entitled to make not more than 2 nominations.² The Prime Minister may also nominate to complete sub-panels.³ The remaining sections in Part III make other provisions in regard to the panels. Part IV deals with the poll and section 36 defines the electorate, and in the case of the first Seanad election the electorate is to consist of the Members of Dáil Éireann (*vide* Article 54 of the Constitution) or, in the case of subsequent Seanad elections, the Members of Dáil Éireann elected at the Dáil election consequent on the dissolution of Dáil Éireann which occasioned such Seanad election. The other component part of such electorate is composed of the persons elected for the purpose by the councils of counties or county boroughs or the former members of such councils, according to the Act.

Ballot papers are sent by registered post to each person on the voters' roll for that election at the address there stated together with a form of declaration of identity,⁴ and voting is by post. The other sections of Part IV deal with administrative and other matters in connection with the poll. The resignation of elected Senators is effected in the same manner as hereinafter described in regard to University Senators.

Although it occurred outside the 1937 orbit, it is pertinent to the subject to report that the Senate elections completed on August 18, 1938, proved that the party ticket was the deciding factor at the polls, notwithstanding the fact that the

¹ Sec 25

² Sec 26

³ Sec 29

⁴ Sec. 42.

Seanad was intended by the Constitution to be vocational in its composition. Many of the most distinguished candidates nominated by cultural bodies did not receive a single first preference vote. The new Second House consists of 60 Senators, 11 nominated by the Prime Minister, 3 from each of the two Universities, and the remaining 43 selected by an electoral college consisting of all the Members of Dáil Éireann and 7 members from every county and borough Council, making a total electorate of 354 persons. For these 43 seats there were 129 candidates.

The election of the 6 University Senators is provided for under the authority of section 18 (6) of the Constitution, by the Seanad Electoral (University Members) Act, 1937, which is divided into four parts, preliminary and general, constituencies, franchise and registration, conduct of elections and miscellaneous. The three schedules deal respectively with the registration rules, the conduct of elections and the counting of votes, the system of election being P R with the single transferable vote, and the voting by post. The electorates¹ in respect of the university Senators, for each of the two universities—the National University of Ireland and the University of Dublin—consist of every person registered as an elector for the particular university, and the qualifications for such franchise are that a person must also be an adult citizen of Ireland and a graduate (other than an honorary degree) of the particular university. In regard to the University of Dublin, however, there are the alternate qualifications to a degree, of a foundation scholarship in that university, or, in the case of a woman, a non-foundation scholarship. The resignation of a university Senator is effected by letter to the Chairman (Cathaoirleach) of Seanad Éireann, who must announce such resignation at its next sitting, upon which the resignation takes effect.² Sections 31 and 32 make the usual provisions in order to prevent a person being elected to the Senate in more than one capacity.

Ireland (Eire) (Speaker of Dáil Éireann).—Under section 54 (3) of the new Constitution,³ that Member of the Chamber of Deputies (*Dáil Éireann*) who was immediately before the repeal of the old Constitution Speaker of Dáil Éireann, became *ipso facto* Speaker of the new Chamber, and the Electoral (*Ceann Comhairle Dáil Éireann*, Chairman of Dáil Éireann) Act passed during the year under review in this Volume under the authority of section 16 (6) of the Constitu-

¹ Sec. 7.² Sec. 29.³ See JOURNAL, Vol. V, 125-136.

tion, provides that the Member of Dáil Eireann who was Chairman immediately before a dissolution of such Chamber, is to be deemed, without any actual election, to be elected a Member of the Dáil Eireann at the ensuing general election, for the constituency for which he was a Member immediately before such dissolution or, if a revision of constituencies has taken place on such dissolution, for that constituency declared on such revision to correspond to the constituency aforementioned. Subsection (2) of section 3 of this Act provides that whenever an outgoing Speaker is deemed under such section to be elected at a general election a Member of Dáil Eireann for a particular constituency, the number of Members actually elected at such general election for such constituency shall be one less than would otherwise be required to be elected therefor.

Section 4 of the Act lays down the procedure to be followed in relation to the election of an outgoing Speaker, by requiring that the writ for the outgoing Speaker's constituency shall be so worded that it directs the returning officer to cause an election to be held of one less than the full number of Members for that constituency. The Clerk of Dáil Eireann is required to send to such returning officer, and to *Gazette*, a certificate in the prescribed form certifying that the outgoing Speaker did not announce to Dáil Eireann before its dissolution that he did not desire to become a Member of Dáil Eireann at the general election consequent upon such dissolution, and the returning officer is required to include amongst the names of candidates elected the name of the outgoing Speaker.

Section 5 makes provision in case of the death of an outgoing Speaker, and section 6 provides that when an outgoing Speaker is deemed under the Act to be re-elected a Member he shall not be considered to be a candidate at such general election within the meaning of the Constitution or of the Prevention of Electoral Abuses Act (No. 38 of 1923).

Southern Rhodesia (Constitutional).¹—With reference to the Constitution Amendment Bill outlined in the previous issue of the JOURNAL,² a further provision was inserted in the Bill during its subsequent passage through the Legislative Assembly on October 19, by which section 22 of the Constitution was amended by the insertion of the following words after the words "half-pay in sub-section (8) thereof"

or that of an officer or member of the Defence Forces of the Colony whose services are not wholly employed by the Colony,

¹ See also JOURNAL, Vol. IV, 32, 33.

² Vol V, 48-50

which indemnifies M P's who were Members of the Defence Force against the consequences of accepting an office of profit under the Crown. The Bill, which became Act No 22 of 1937, was published in the *Government Gazette* of October 23. The following instruments were published by the Government for general information and came into force from October 22, 1937.

(a) Letters Patent dated March 25, 1937 passed under the Great Seal of the Realm, further amending the Southern Rhodesia Constitution Letters Patent 1923 and revoking Articles 79 and 80 and 82 to 89 inclusive, of the Southern Rhodesia Order in Council 1898, and the Southern Rhodesia Order in Council 1920 and (b) Additional Instructions of the same date passed under the Royal Sign Manual and Signet, to the Governor and Commander-in-Chief of the Colony.

Southern Rhodesia (Limitation of Debate) — Standing Orders¹ of the Legislative Assembly provide that when Mr. Speaker is in the Chair, Members may not speak longer than 40 minutes upon any question before the House, except in the case of the Minister and Member in charge of Bills or Motions who are not restricted in regard to the length of time they may speak in moving a Resolution of a Bill (or a Motion) and in reply thereto. Such restriction, however, does not apply to Members speaking on the Motion to go into Committee of Supply, the debate upon which is governed by the provisions of S O 100 to be referred to later.

In regard to Financial Business,² subject to the limitation hereinafter described, full debate is allowed on the Motion to go into Committee of Supply upon the annual Estimates of Expenditure from the Consolidated Reserve Fund, but a day of debate does not include the day or days on which the Financial Statement is made or the days on which the Order for the resumption of debate does not stand first on the Order Paper for the day and is so taken. Further, for the purpose of this Standing Order,² 2 days of debate on which the discussion is not continued at the resumption of business at 8.0 p.m. are considered as equivalent to 1 day.

Paragraph (3) of this Standing Order provides that the debate on the Motion to go into Committee of Supply must not exceed 3 days as abovementioned, and at 10 55 p.m. on the last of such days, if Tuesday or Thursday, and at 5 55 p.m. if on any other sitting day, should the debate not have been previously concluded, business must be interrupted by Mr.

¹ S O. 67 (1).

² S.O. 100.

Speaker Should the reply or replies not have then been delivered, Mr Speaker on such interruption ascertains from the Minister in charge of the Motion to go into Committee of Supply, or in his absence some other Minister, the date upon which resumption of debate is to be set down, in order that such reply or replies may be made. If he thinks fit, however, he may have such resumption set down with precedence over all other business on the first following day upon which Government Business has precedence. When the reply or replies on the debate have been made, Mr Speaker proceeds to put all such questions as may be necessary to determine the decision of the House on the Motion to go into Committee of Supply.

In Committee of the Whole House, however, the Standing Orders¹ provide that on a Bill, instruction, address or other matter, Members are not allowed to speak to any question for longer than 15 minutes, nor speak for more than one such period consecutively, except in the case of Ministers and Members in charge of Bills or Motions, who are not so restricted. Further,² in Committee of Supply, when the Chairman is required to put the Estimates Vote by Vote, or Head by Head, as the case may be, no Member may speak to any such Vote or Head for more than 10 minutes at a time nor address the Committee for more than one such period consecutively; this does not, however, apply to a Minister in charge of the class of Estimates under consideration or when an amendment is proposed by which a Minister's salary is specifically and *bona fide* challenged on a question of policy, when the mover of such an amendment is allowed to speak for a period not exceeding 40 minutes provided that such extended periods shall not be permitted to more than 2 Members on any Vote or Head.

In addition,³ in Committee of Ways and Means, the details of the proposed method of raising funds is open to discussion, but in such discussion, whether on the original Motion or on any amendment thereof, no Member may address that Committee more than twice on each question proposed from the Chair, nor speak for longer than 15 minutes on each occasion, except the Minister in charge of the proposal to raise funds, or in respect of any alternative proposal, the Member submitting it, in which case neither Minister nor Member is restricted either in regard to the length of time they may address the Committee or the number of times they may speak, provided that should an amendment be proposed

¹ S.O. 67 (2).

² S.O. 106 (1)

³ S.O. 118.

which in the opinion of the Chairman is submitted merely for the purpose of raising debate, and thus evading S O. 118, he is empowered forthwith to put the question to such Committee, when it shall be decided without debate whether such amendment shall be allowed

In regard to the limitation of debate, during the 1937 session a system of "beacon" or "traffic lights" was installed in the House, namely, 2 robots about 8 by 6 inches with three-sided glass panels are placed one at each end of the Clerk's Table and are operated by a switch controlled by the Clerk. The lights are only operated when Mr Speaker is in the Chair—*i.e.*, for the 40-minute speeches. The "traffic lights" are operated as follows. When a Member rises to speak a green light appears, when he is within 5 minutes of the termination of his period, a yellow light appears, when the time limit is reached a red light, which last-named is the signal for the Member to stop.

The Clerk of the House reports that there exists no doubt as to the convenience of the system to a Member, as the warning light enables him to summarize his speech and make his points, whereas under the old system he was often caught out by the time limit.

In the Committee of the Whole House, or of Supply or of Ways and Means, however, although the robots could be operated in Committees, it has been found that in the absence of an *automatic* timing device, sand-glasses are more convenient. These are 15- and 10-minute glasses, controlled by the Clerk, who has 3 of each such glasses, in addition to the 2-minute division sand-glass, in front of him. The appropriate sand-glass is turned over as each Member rises to speak. After a little while the Clerk gets to know the Members who are likely to exceed the time limit and no difficulty is experienced in operating the glasses. Both systems are reported as working to satisfaction.

Southern Rhodesia (Remuneration to Members).—On the recommendation of the Committee on Standing Rules and Orders, which Committee also functions as the Internal Arrangements Committee, Mr. Speaker's salary has been increased to £1,000 p.a., and Members' allowances to £400 p.a., with effect from April 1, 1937, in both cases payable monthly, instead of quarterly, as heretofore.

Amalgamation of the Rhodesias.¹—On November 22² a

¹ See also JOURNAL, Vols IV, 30-32, and V, 50-52

² 329 H.C. Deb 5. s 1023-1025, see also 254 *ib.*, 1471, 1473

question was asked in the House of Commons as to whether the Secretary of State for Dominion Affairs was in a position to make a statement regarding the question of closer relations between Southern and Northern Rhodesia and Nyasaland, to which the Marquess of Hartington (Under Secretary of State for Dominion Affairs) replied recalling that in 1931 H.M. Government in the United Kingdom had the subject under consideration, and their view was that for some time to come Northern Rhodesia should continue to work out its own destiny as a separate entity, observing the closest possible co-ordination with its neighbours and especially with Southern Rhodesia. As a result of discussions with the Prime Minister of Southern Rhodesia, with the Governor and two unofficial members of the Legislative Council of Northern Rhodesia and with the Governor of Nyasaland, H.M. Government had reached the conclusion that with due regard to their special responsibility for the interests of the natives, consideration should be given in detail to the possibility of further promotion of closer co-operation or association between the three Territories. Some of the subjects for examination are, transport and communications, scientific and technical research and services, labour, especially the inter-territorial migration of labour, trade and economic policy, judicial arrangements, defence, and, so far as international obligations affecting the Territories permit, customs duties. H.M. Government had therefore proposed to advise His Majesty to appoint a Royal Commission to visit the Territories concerned with the following terms of reference

to inquire into and report whether any, and if so what, form of closer co-operation or association between Southern Rhodesia, Northern Rhodesia and Nyasaland is desirable and feasible, with due regard to the interests of all the inhabitants, irrespective of race, of the Territories concerned and to the special responsibility of His Majesty's Government in the United Kingdom for the interests of the native inhabitants

The Report of the Commission, which visited the Territories in question in 1938, has not yet been issued and will be dealt with in the next issue of the JOURNAL.

India (Governor-General in Council).—On September 27,¹ in the Central Legislative Assembly the Member for Commerce and Railways (Hon. Sir Sayid Sultan Ahmad) moved the following Motion

¹ India Leg. Deb., Vol VI, No 7

That this Assembly recommends to the Governor-General in Council that the International Agreement regarding the Regulation of Production and Marketing of Sugar, signed in London on the 6th May, 1937, be ratified by him,

to which an amendment was moved by the Member for United Provinces. European (Mr J Ramsay Scott) "That for the original Resolution the following be substituted.

That this Assembly recommends to the Governor-General in Council that the International Agreement regarding the Regulation of Production and Marketing of Sugar, signed in London on the 6th May, 1937, be not ratified by him and expresses its strong disapproval of the action of the Central Government in agreeing to prohibit the export of sugar by sea except to Burma for the next five years without the knowledge and consent of the Industry

This Assembly further recommends that the Central Government explore all possible avenues for the export of sugar and take such other steps for the purpose of developing export markets, both by land and by sea, for sugar.

Upon the amendment being put the voting was: AYES, 66; NOES, 52.

Under Indian Legislature Rule 24,¹ the Resolution, in the form in which it was passed, was duly communicated by the Secretary of the Chamber to the Governor-General in Council

The Amendment being merely a recommendation, the Governor-General in Council was entirely free to accept or reject it, and on November 22, it was announced that the Government of India had informed the Secretary of State of their decision to overrule a recommendation of the Legislative Assembly, which had opposed ratification.

On October 2, the Council of State adopted a Motion identical in form to the original Motion moved in the Legislative Assembly by the then Member of the Government for Commerce and Railways.

India (Opening of Central Legislature).—As a rule there is no formal opening of a Session by the King's Deputy, but copies of the summons to Members of the Council of State and of the Legislative Assembly, in each case signed by the Secretary of the Chamber, are given on the next page.

¹ I L R 24 reads

A copy of every Resolution which has been passed by either Chamber shall be forwarded to the Governor-General in Council, but any such Resolution shall have effect only as a recommendation to the Governor-General in Council.

COUNCIL OF STATE

ORDER

SIMLA, *the 19th August, 1937.*

In pursuance of subsection (3) of section 63A of the Government of India Act as set out in the Ninth Schedule to the Government of India Act, 1935, I, Victor Alexander John, Marquess of Linlithgow, hereby require the attendance of the members of the Council of State in the Legislative Assembly Building at Simla at 11 a m on Monday, the 13th September, 1937

By order of the Governor-General

LEGISLATIVE ASSEMBLY

SUMMONS

NEW DELHI, *the 20th November, 1937*

His Excellency the Governor-General, in exercise of the power conferred by subsection (2) of section 63-D of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, having been pleased to direct that a session of the Legislative Assembly be held at New Delhi and to appoint Monday, the 31st January, 1938, as the date for the commencement of the said session, you

are hereby summoned to the said Assembly at the place and on the date aforesaid

By order of the Governor-General.

The following is the Circular (XXII) issued to all Members of the Council of State, signed by the Secretary of that Chamber, on the occasion of the Governor-General addressing the Indian Legislature.

SIR,

SIMLA, *the 1st September, 1937*

In continuation of the circular from the Council of State No. XXI, dated the 31st August, 1937, I am directed to state that on the occasion of His Excellency the Governor-General's Address to the Members of the Indian Legislature at 11 a m. on Monday, the 13th September, 1937, Levee Dress should be worn by Members who are entitled to wear uniform. Others should wear morning dress or the most formal dress of which they are in possession

I have the honour to be,

Sir,

Your obedient servant.

India (Princes and Federation).—The Constitutional Committee of the Chamber of Princes¹ met on January 25 to consider the questions affecting the States' accession to Federation, with particular reference to the proposals by the Hydari Committee.¹ Most of the 25 representatives present had consultations with the Viceroy's emissaries about the draft Instruments of Accession which were examined in the light of the proposals made by the Hydari and the Punjab States Committees.

The Chamber of Princes, as mentioned in the previous issue of the JOURNAL,² consulted independent legal authorities, and one of them in a statement to the *Times of India* said:³

that the Princes' deliberations over Federation had reached a stage where attention was fixed upon the terms of the Instruments of Accession. He said the recent committees, including the Hydari Committee and the Constitutional Committee under the chairmanship of the Maharajah of Patiala, were of the unanimous opinion that the following clauses must be added to them

1. A provision that nothing in the Instrument shall affect the Ruler's rights and obligations in relation to the Crown respecting any matter not within the functions of the Federation, and that no Federal legislative authority shall have jurisdiction respecting such Crown rights and obligations.
2. A provision that no function respecting Federal matters shall be exercised in relation to the States by any authority other than the Federal authority and in accordance with the terms of the Instruments.
3. A provision that the Federal Legislature shall not have power to make laws for States respecting matters specified in a list annexed to the Instrument.
4. A fundamental provision referring to the relation of the Ruler to the Federation, declaring that he transfers only certain specific powers, and that other powers, authority and rights are reserved to him. Such a clause when proposed last year in London had been criticized as appearing to attempt to limit the sovereignty of the Crown. This had not been its intention, and it had been redrafted in the hope of

¹ See also JOURNAL, Vols. IV, 77-78, V, 53.

² *Ib.*, V, 53.

³ *The Times*, March 3, 1937.

meeting this objection. It now read: "Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or, save as provided by the Instrument or by Federal law, the continuance of any of my powers, authority or rights, and the exercise thereto, save as above reserved for me."

On November 1,¹ a question was asked in the House of Commons as to what steps were being taken for producing a complete scheme to be placed before the Princes of India showing how the Federal portion of the Government of India Act would be brought into operation, to which the Under-Secretary of State for India (Lord Stanley) answered that the replies of the States had been received to the Viceroy's invitation to the rulers to specify the limitations on the exercise of the legislative and executive authority of the Federation to which they would wish their accession to be subject, and that the suggestions of the Princes for adapting their individual requirements to the scheme of Federation under the Constitution were still under active consideration.

India (Provincial Autonomy).—References to the new Constitution² for India have already been made in previous issues of the JOURNAL³ and the year under review in this issue marks the introduction of Provincial autonomy in the 11 Governors' Provinces, as well as the separation of both Burma and Aden from India and the supersession of that statutory corporation known as the Secretary of State for India in Council, which had been in existence for nearly 80 years, by advisers appointed by the Secretary of State for India under section 278 of its new Constitution. All these operations came into force on April 1, but Part II of such Constitution, which deals with Federation, has yet to be put into effect. The old central legislative authority for India, therefore, still continues, but both the Council of State and the Legislative Assembly have lost their Burma representatives, and Berar, to which special reference will be made later, and which is now included in the Central Provinces, has been given an elected seat in the Council of State. As a result, however, of the coming into operation of the new Constitution with the exception of Part II thereof, certain changes have taken place, especially with regard to the distribution of subjects to be dealt with by

¹ 328 H. C. Deb. 5 s. 509.
³ Vols. IV, 61-99, V, 52, 53.

² 26 Geo. V, c. 2.

the Central Legislature *vis-à-vis* the Provincial Legislatures (*vide* the Seventh Schedule of the Act) The general elections to appoint the Members of the new Legislative Assemblies in such 11 Provinces, namely, Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North-West Frontier Province, Orissa and Sind, as well as for the election of the Members of the new Legislative Councils for the 6 bicameral Provinces—Madras, Bombay, Bengal, the United Provinces, Bihar and Assam—took place on various dates in the early part of the year In some Provinces the voting was carried out on a single day, while in others it took considerably longer Separate Polling Days were, in some cases, even allotted to various interests and communities in several of the Provinces More than 5,000 candidates stood for the 1,585 seats in the Provincial Assemblies and 254 to 263 seats in the Legislative Councils of the 6 bicameral Provinces The electors numbered nearly 30 million, of whom more than $\frac{1}{8}$ were women For the first time in the history of India *purdah* women exercised the franchise, special voting arrangements being made for them Motor cars were freely used at the elections, some parties even hiring buses to bring their supporters to the poll; and flags and loud speakers were in evidence Preliminary elections were held on the basis of the Poona Pact for representation of the scheduled castes.

Many political parties, together with other sections and interests, were represented at the Polls in the several Provinces, but as the political aspect of Parliamentary government does not come within the sphere of this JOURNAL, those of our readers seeking such information are referred to other and more appropriate sources

It may here be said, however, that, constitutionally, difficulties arose in some of the Provinces, owing to the special powers vested in the Governors under the Constitution, to such a degree that the majority parties in certain Provinces declined to accept office, and consequently minorities had to be called upon by the Crown to form Ministries. Confidence, however, was eventually restored, the minority Ministries resigned, and Ministries representing the majorities in the particular Legislative Assemblies in question assumed office as contemplated under the Constitution, which thereupon proceeded along its normal course.

During this time, the introduction of Provincial autonomy was the subject of much attention at Westminster, both by

Question¹ and Ministerial Statement,² as during debate;³ a memorable message on the subject was issued by the Viceroy,⁴ which space does not admit of being referred to here. The footnotes hereto, however, will guide those who wish to pursue these subjects.

As has been already mentioned, amongst the changes in regard to the Provinces was the attachment of Berar to the Central Provinces. This was effected by an Agreement entered into between the Viceroy and His Exalted Highness the Nizam of Hyderabad, India's premier State,⁵ following discussions which had taken place before even the Round Table Conferences upon All-India Federation. Berar, which covers about 18,000 square miles and embraces a population of nearly 4 millions, had been under British administration since 1853, when it was temporarily assigned to the East India Company in order to meet certain obligations by the Nizam's Government. In order, however, to meet the repeated claims by the Nizam for the restoration of Berar, the Viceroy (Lord Curzon) in 1902 (the year of King Edward VII's Durbar) negotiated with the father of the present Nizam for a perpetual lease of the territory on payment of Rs. 25 lakhs⁶ p. a. The Agreement above mentioned, which was dated October 24, 1936, however, removed all controversies and placed on record the recognition and reaffirmation of the sovereignty of the Nizam over Berar, which, with that part of British India known as the Central Provinces, is henceforth to be administered together as one Province under the Government of India Act, 1935. This Agreement possesses an added interest in that it represents the first Accession of an Indian State to the new All-India Federation, although section 6 of that Constitution does not apply to the Agreement. The Agreement, which was published in a *Gazette of India, Extraordinary*, of November 13, 1936, contains many other provisions, which there is not space to deal with. It is, however, to be noted, in regard to the question of Accession to Federation, that the Agreement provides:

¹ 104 H.L. Deb. 5 s. 867-890, 105 *ib.*, 182-196, 107 *ib.*, 744, 745, 317 H.C. Deb. 5 s. 42, 479, 480, 482, 832, 318 *ib.*, 4, 810, 811, 855, 319 *ib.*, 14, 590, 320 *ib.*, 56, 811, 812, 321 *ib.*, 1, 2, 809, 810, 1611, 1660, 1661, 2535, 322 *ib.*, 35, 38, 361-363, 586, 1398, 323 *ib.*, 1-4, 765, 766, 1249; 324 *ib.*, 12, 13, 650, 1396, 1397, 325 *ib.*, 2-4, 552-557, 813, 326 *ib.*, 22, 30-33, 328 *ib.*, 509, 329 *ib.*, 825, 826, 828, 1660, 1662.

² 104 H.L. Deb. 5 s. 867-890, 325 H.C. Deb. 5 s. 554-557.

³ 103 H.L. Deb. 5 s. 17, 18, 25, 104 *ib.*, 867-890, 105 *ib.*, 408-420 325 H.C. Deb. 5 s. 163-170.

⁴ *The Times*, June 22, 1937.

⁵ See JOURNAL, Vol. IV, 77-78.

⁶ 1 lakh = £7,500.

that nothing therein affects the rights of His Exalted Highness with respect to his territories other than Berar, and it is hereby declared that this agreement has effect whether or not His Exalted Highness is pleased to execute or His Majesty is pleased to accept, any such Instrument of Accession to the Federation of India as is contemplated by the provisions of Part II of the Government of India Act, 1935

The same *Gazette* announces that His Majesty has been pleased to command that the Nizam of Hyderabad and his successors shall henceforth hold the dynastic title of "His Exalted Highness the Nizam of Hyderabad and Berar" in recognition of such sovereignty and that the heir-apparent of the Nizam shall have the title of Prince of Berar. The reigning Nizam has often been referred to both officially and otherwise as our "Faithful Ally," and indeed the pages of Indian history are rich in proof of this attribute

We now come to the procedure followed at the opening of the new Provincial Legislatures. In the consideration of this subject it should be borne in mind that the status of the Provincial Legislatures even under the new Constitution, although in very considerable advance of that of their predecessors, is not that of a Parliament under what is known as "Responsible Government." Therefore the procedure at the opening of the new Provincial Legislatures is relative, having closer application to constitutional conditions in India.

The Provincial Legislatures first met under the new Constitution on various dates during the period July-September, and while it is not possible to refer separately to the procedure in every Province, certain references will be made to indicate the general course followed. In the first place, the time and place of meeting was fixed by the Governor of the Province under section 62 (2) of the Constitution. In the senior Province—Madras—the Legislative Council and the Legislative Assembly met respectively in the Council Chamber, Fort St. George, and in the Senate House, at 11 o a m on July 14, when, as required by section 67 of the Constitution, each M L C and M L A. (to give the suffixes now in use) then made and subscribed to that particular form of Oath of Allegiance laid down in the Fourth Schedule to the Constitution as appropriate to his case. As the President and Speaker had not at that stage been elected and the Governor did not exercise his authority to do so, the Oath was administered by a Member of each House appointed for that purpose by the Governor under section 65 (3) of the Constitution. The

Chairman having previously subscribed to the Oath, before the Secretary of the House concerned, after bowing to the empty Chair took his seat thereon and thereupon administered the Oath to the other Members present. As the Members of the Council of Ministers and those of the Interim Ministry had already taken the Oath before the Governor, the names of the other Members of the House were called out by the Chairman in the order in which they appeared in the alphabetical list of Members. The Members then came up to the Secretary's table and after each taking the particular form of Oath took their seats in the House, which was then adjourned for the day.

The Governor may under section 63 (1) of the Constitution address both Houses assembled together, and such a meeting was held by the Governor of Madras in the Assembly Chamber on August 31.

As regards visitors, tickets of admission to the various galleries, namely the Ordinary Visitors' Gallery, the Ladies' and the Distinguished Strangers' Galleries, were issued on the previous day, in accordance with the rules prescribed therefor.

Under Rule 47 of the Madras Legislative Assembly, Members sit in such order as the Speaker appoints, and, in accordance with the usual practice, the *bloc* of seats to the right of the Speaker was allotted to the Ministers and the Members supporting the Government, that to the left of the Chair set apart for the Members in Opposition. Every Member was provided with a seat to which was affixed a card bearing the name of the occupant to whom it had been allotted, the *blocs* being according to political parties. A similar procedure obtained in the Legislative Council. In each House the Secretary thereof sat at a table in front of President or Speaker (who was neither bewigged nor gowned) as the case may be, in the accustomed manner. The Acting Chairman next informed his particular House of the day appointed by the Governor for the election of President, or Speaker, and stated a previous date and time within which nominations therefor had to be handed in to the Secretary. The same procedure was also followed in regard to the Deputies to such offices.

In the Legislative Councils announcement was made in accordance with the notification sent round intimating that the method by which certain M.L.C.'s (*vide* para 18, Fifth Schedule to the Constitution) would in the first composition of the Legislative Council be required by the Governor to retire before the expiration of the 9-year period in order that

$\frac{1}{3}$ of the total number of M.L.C.'s retire every third year thereafter, would be postponed until further orders

In Assam, the Oath of Allegiance was administered by the Governor beforehand to the Members appointed by him to act as Chairmen until the President and Speaker were elected. Therefore after taking the Chair of the Legislative Council on April 8, the Acting Chairman administered the Oath to the other Members present, after which he notified the names of the 4 candidates (together with those of their respective proposers and seconders) for the office of President, and, 2 candidates having withdrawn, the election was proceeded with by ballot, Members putting a cross against the candidate of their selection. The voting papers were then scrutinized and counted and the name of the chosen candidate was announced to the House by the Chairman, who requested him to take the Chair as President. Mr. President was then congratulated upon his appointment, first on behalf of the Ministry and Government and afterwards by Members representing the various political sections in the House. It is interesting to note in these speeches reference to the time-honoured traditions, as they are understood in Parliaments of the British Empire, as attached to the office of Speaker. One Member observed that whatever party or group the new President belonged to before the elections, from the moment of his election to the Chair he was expected to give all Members even-handed support, and a Member representing the "scheduled castes," expressed the sincere wish that the new President would discharge his functions with impartiality and remove any "untouchability." To all the congratulations the new President then suitably responded, after which the House proceeded to the election of Deputy-President, to which office it unanimously elected a Lady Member. A panel of Chairmen was then nominated by the President, after which he read a message from the Governor (for which the President requested all Members to rise in their seats), requiring the attendance of the Members of the Legislative Council on the following day in the Assembly Chamber at 2.30 p.m. A Committee was then formed to draw up Rules of Procedure and the Business of the Session was proceeded with.

In the Assam Legislative Assembly at 11.0 a.m. on the previous day a similar procedure was followed in regard to the swearing-in of M.L.A.'s as has already been described in regard to the Legislative Council of that Province, after which the House adjourned for lunch. Upon reassembling the

election of Speaker was similarly proceeded with, 8 nominations had been sent in, each with the name of the proposer and seconder, whereupon 6 of these withdrew, which left only 2 in the contest. The ballot was also here resorted to, the voting being 56 for and 51 against. The Speaker-elect thereupon took the Chair and was the recipient of congratulatory speeches from various parts of the House, one Member remarking that although no *balance* and *mace*—emblems of *justice* and *fairplay*—were to be seen in the House, they all hoped that the new Speaker would constantly have a picture of those two emblems before him—the Member adding: “From this very moment, Sir, you belong to no party. Henceforth you are no man’s man, but every man’s man.” Another Member (indeed it would be invidious to make any distinction by mentioning Members by name) during the course of his speech said:

Mr Speaker, we are now entering upon a new era. We have got our own traditions to create, and on your judgment, on your ruling, on your decision, will depend the growth, the power, the justice and influence of this House.

Upon the conclusion of the congratulatory speeches, Mr. Speaker thanked the House in words which were in full accord with the best Parliamentary traditions.

The new Speaker was soon, however, faced with responsibility, for a Motion of no confidence in the Government was immediately moved, which he ruled out of order, and notice was given. The Chamber then proceeded to the election of Deputy-Speaker, following the same procedure as upon the election of Speaker. The Speaker then read the Governor’s message requiring the attendance of the two Houses in the Legislative Assembly Chamber on the morrow.

At the joint meeting of the two Houses on April 9, which assembled at 2.30 p.m. in the Assembly Chamber, the Governor delivered his own opening speech, at the conclusion of which His Excellency, accompanied by his personal staff, then left the Assembly Chamber and the Speaker adjourned the House until 3.5 p.m. the same afternoon, when Business was entered upon.

Upon the return of the Members of the Legislative Council to their Chamber with their President, he informed the House that in the exercise of the Governor’s powers under section 62 (2) (b) of the Government of India Act, 1935, the Governor had declared that at the conclusion of the meeting of the Council that day, it would stand prorogued.

At the election of Speaker in the Legislative Assembly of the new and unicameral Province of Orissa, there was only one nomination and the Acting Speaker declared the candidate duly elected, after which he was conducted into the House by the Secretary, Assistant Secretary and Ministers. Here the proceedings were more spectacular, for on the new Speaker's assumption of the Chair the *Bande Mataram* was sung, the House standing. The Speaker was then the object of many congratulatory speeches upon his appointment, to which he suitably responded in full accord with the best Parliamentary traditions. After the transaction of formal business, the House was adjourned until August 30, at 11 0 a.m.

Space will not admit of information being given in this issue as to the other business taken in the various Provincial Legislatures on the opening days, such as the salaries of Ministers, Members, and their travelling allowances, the new Rules of Procedure, Library Rules, etc. These will be reserved for a future issue of the JOURNAL.

Such description, however, as has been given, will serve to show broadly the procedure followed by the new Indian Provincial Legislatures in connection with their opening proceedings.

Madras (Parliamentary Prayers).—Ever since July 14, 1937, when the Legislative Assembly of this Province, under the new Constitution for India, met for the first time, with the exception of January 28, 1938, the first two to four lines of the following Bengali song has been sung in the House by one of the Members, all other Members present, including the Speaker, standing:

॥ वन्दे मातरम् ॥

सुजलां सुफलां मलयज शीतलां

सस्यश्यामलां मातरम् ।

शुभ्र-ज्योत्स्ना पुलकित याशिनीम् ,

कुलकुसुमित-द्रुमदलशोभिनीम् ,

सुहासिनीं सुमधुरभाषिणीम्

सुखदां वरदां मातरम् ॥

(Transliteration in English)

Vandē Mātāiam !
 Sujalām, Suphalām,
 Malayaja Sēetalām,
 Sasya Śyāmalām,
 Mātaram !
 Shubhra Jyotsnā Pulakita Yāminēēm,
 Phulla Kusumitā Druma Dala Shōbhinēēm,
 Suhāsinēēm, Sumadhura Bhāshinēēm,
 Sukhadām, Varadām, Mātāiam

(Translation in prose by Sri Anubindo Ghose)

I bow to thee, Mother,
 richly-watered, richly-fruited,
 cool with the winds of the south,
 dark with the crops of the harvests,
 the Mother !
 Her strands rejoicing in the glory of the moonlight,
 her lands clothed beautifully with her trees in flowering bloom,
 sweet of laughter, sweet of speech,
 the Mother, giver of boons, giver of bliss !

Objection, however, was taken to the singing of this song on September 23, by a Mussalman Member, upon which Mr Speaker justified it on the analogy of prayers in other Parliaments before the commencement of their proceedings and described the song as a prayer common to all, being the prayer of their motherland. At the same time Mr. Speaker remarked that he was thinking of supplementing it by other forms of religious prayer, and on December 21 a prayer from the Holy Koran was recited by a Moslem Member after the singing of the *Bande Mataram*, and on the January 28 above-mentioned, which was a Friday and as such sacred to Mussalmans, there was only a Mussalman prayer, recited by another Moslem Member

Since January 27 Mr Speaker has supplemented the singing of the *Bande Mataram* song by the following prayer in English, read by Mr. Speaker himself

O Eternal and Almighty God,
 We, the Representatives of the People of the Madras Presidency assembled here in Parliament, fervently pray that our hearts may be so enlightened that we may be freed from all passions and prejudices, and that our

minds be so constituted that in our deliberations we may not purpose or decide otherwise than in the best interest and welfare of the People

We heartily pray that we may possess wisdom and understanding to pass Laws and Resolutions for the maintenance of Truth and Justice, wealth, health and happiness of the People, and that we may also possess strength and determination to devote ourselves to the service of our motherland and harness all energies and resources for the attainment of Freedom and Peace.

Om Santih, Santih, Santih.

Mr. Speaker has ruled that Members are not bound to be in attendance during prayer, and to facilitate the attendance of Members who are not interested in these prayers, bells are rung 3 minutes before the commencement of a sitting and also again after the completion of the prayer, so that Members remaining outside the Chamber may know that prayers are over and the business of the House is being begun

Owing, however, to the objection raised by some Moslem Members, Mr. Speaker convened a Conference representative of various sections of the House, which met on December 22 to discuss the question of prayer in the Legislative Assembly. No decision was arrived at, but it is believed that the Conference would meet again to continue the discussion.

Northern Rhodesia (Unofficial Members).—On December 8, in reply to a question in the House of Commons as to what changes had recently been effected in Northern Rhodesia the Secretary of State for the Colonies (Rt. Hon W G A Ormsby-Gore) said that after consultation with the Governor, a proposal made by the elected Members of the Legislative Council of that Colony had been approved of, by which the numbers of official and unofficial Members of such Council be equalized by the addition of a nominated unofficial Member to represent Native interests and the reduction by one of the number of official Members. The practice had also been approved of, by which elected Members would be consulted whenever possible on major questions of administration and financial policy and serve as members of various advisory boards and be represented at the annual conference of Provincial Commissioners. The new nominated Member above-mentioned would be included in this consultation.

Ceylon¹ (Governor's Powers).—On November 3, 1936, the Minister for Home Affairs (Hon Sir D B Jayatilaka) introduced into the State Council a Motion to approve the new scale of salaries for non-new entrants of certain grades in the Police, which was rejected.

On June 1, 1937, the Supplementary Estimate to give effect to such new scales was introduced by the Hon. the Financial Secretary (one of the three Official Secretaries to the Government) under Article 22 (1), (a)² of the Constitution, upon which debate was adjourned on May 18, June 1 and 3.

On July 13, 1937,³ His Excellency addressed the following Message to the State Council:

QUEEN'S HOUSE, COLOMBO,

June 30, 1937

SIR,

I have the honour to refer to the Supplementary Estimate for Rs 47,788 which the Acting Financial Secretary, on my authority and on my instructions, proposed to the State Council

¹ See also JOURNAL, Vols. II, 9-10, III, 25-26

² Article 22.

Governor's powers in matters of paramount importance and matters essential to give effect to the provisions of this Order.

22 (1) If the Governor shall consider that it is of paramount importance to the public interest, or essential to give effect to any of the provisions of this Order, that any Bill, Motion, Resolution, or Vote which the Council is empowered to pass, in the exercise of either its legislative or its executive functions, should have effect, then in such case,

notwithstanding any of the provisions of this Order or of any Standing Orders made under this Order

(a) it shall be lawful for any Officer of State, acting by the authority and under the instructions of the Governor, to propose any such Bill, Motion, Resolution or Vote to the Council and the same shall have priority over all other business of the Council,

(b) the Governor may declare that any such Bill, or any part of any such Bill or any such Motion, Resolution, or Vote is of paramount importance or is essential to give effect to the provisions of this Order, and thereupon such Bill, or part of a Bill, Motion, Resolution or Vote shall have effect as if it had been passed by the Council. Such declaration may be made by the Governor by message addressed to the Speaker or by an Officer of State, acting by the authority and on the instructions of the Governor, either before or after the votes of the members have been taken

(2) Any Bill which shall have effect, in whole or in part, by reason of a declaration made by the Governor in accordance with this Article, shall be expressed to be enacted by the Governor and, upon being signed by the Governor, shall be of the same force and effect as though it had been passed by the Council and had received the Governor's assent and shall be subject to disallowance by His Majesty in like manner, and all the provisions of this Order which relate to Bills passed by the Council, or to the assent of the Governor to such Bills, shall apply to Bills enacted by the Governor in accordance with this Article, or to the signing of such Bills by him, as the case may require.

³ Ceylon Debates, 1937, 1547.

on May 18, 1937, for the purpose of securing the necessary provision to give effect to certain changes of the non-new-entrant scales of salary of the gazetted ranks of the Police. As I considered that it was of paramount importance to the public interest that this vote should have effect, it was proposed to the State Council under Article 22 of the Ceylon "State Council" Order in Council, 1931. It has been reported to me that on three occasions, namely, May, 18, 1937, June 1, 1937, and June 3, 1937, the consideration of the vote was deferred on a Motion for the adjournment of the debate thereon. These repeated adjournments have had the effect of postponing unduly the consideration of the vote.

2. I accordingly by this message addressed to you, as the Speaker of the State Council, declare the vote proposed by the Acting Financial Secretary to be of paramount importance, and I request you to inform the State Council at its next meeting, that I have made this declaration.

I have the honour to be, Sir,
Your Obedient Servant,

R. E. STUBBS,
Governor

The Honourable The Speaker,
State Council

But upon the Speaker announcing the "second item on the Agenda" for the day, a Member questioned the right of the Speaker to read the Message and another Member questioned the Message for other reasons.

Mr. Speaker, however, during the course of his Ruling¹ said:

If the Governor considers any vote which is of paramount importance to the public interest should have effect then under Article 22 (1) (a) he gets an Officer of State to propose such vote to the Council; under Article 22 (1) (b) he is empowered to make a declaration that such vote is of paramount importance and thereupon any such vote shall have effect as if it had been passed by the Council notwithstanding the provisions of Article 21. It is clear from the provisions of this Article that the proposal should be submitted to the Council by way of Bill, Motion, Resolution or Vote, and a decision thereupon should be given either by a majority of votes or by the special power of declaration which the Governor is empowered to make under Article 22 (1) (b).

In the present case the vote was submitted to Council for consideration and decision under Article 22 (1) (a) on the 18th May, 1937, and the Motion is still pending in the Orders of the Day. The Governor now by his message addressed to the Speaker under Article 22 (1) (b) makes a declaration that this "vote is of paramount importance and shall have effect as if it had been passed by the Council." This declaration overrides the normal procedure under Article 21 for obtaining a decision of the

¹ *Ib*, 1546, 1547

Council on this Motion by a majority of votes and has the same effect as if the Council had passed the vote

In my opinion the Governor is entitled to make his declaration during the pendency of the Motion introduced under Article 22 (1) (a). The words "either before or after the votes are taken" are clear and unambiguous and do not mean immediately before or after the votes are taken

Mr Speaker therefore concluded by saying that it was his duty as the medium of communication between His Excellency the Governor and the Council to read the Message, which he did, and at its conclusion stated as follows.

Upon the reading of this Message item No 8 will have the same effect as if it had been passed by the Council

The Ruling was, however, questioned on July 27, 1937,¹ by the Member for Dumbara (Mr A Ratnayake), by means of the following Motion, which was agreed to.

"In the opinion of this House the ruling of the Speaker on July 13, 1937, on the point of order raised by the hon Member for Kandy, is incorrect, and in its place there should be substituted a ruling that a Message purporting to certify as of paramount importance any Bill or any part of such Bill or any Motion, Resolution or Vote should be read by the Speaker or by any Officer of State only at the conclusion of the discussion on such item either just before or just after the votes of the members have been taken."

*Constitutional Amendment.*²—On December 9, 1937,³ a question was asked in the House of Commons as to whether the Secretary of State for the Colonies had considered the memorial prepared by a Committee in Ceylon, asking for the appointment of a Royal Commission to inquire into the working of the Ceylon Constitution,⁴ but the Minister (Rt Hon. W. G. A. Ormsby-Gore) replied that he was not in a position to make any statement.

On December 13,⁵ the same Minister in the House of Commons was asked what representations he had received alleging the unsatisfactory working of the Ceylon Constitution, and whether there existed any considerable demand by the citizens of Ceylon for fundamental changes, and whether he was contemplating any changes in the near future. The Minister replied that he had received representations from a

¹ Ceylon Deb July 27, 1937 1757

² See also JOURNAL, Vols II, 9-10; III, 25-26.

³ 330 H C Deb 5 s 596

⁴ The Ceylon (State Council) Order in Council, 1931.

⁵ H C Deb 5 s 808 to 810

number of societies and individuals in Ceylon suggesting changes in its Constitution, which he gathered were fairly widespread, although there was no general agreement as to the nature of the amendments desired, but the Governor had been asked to furnish a report on the subject. To supplementary questions the Minister replied that he had had representations about the Committee system, the representation of minorities and a variety of subjects arising out of the Constitution.

Certain correspondence relating to the enactment of the Ceylon (State Council) Amendment Order in Council, 1937, was recently published in Ceylon as an official paper¹. The correspondence opens with a letter dated December 18, 1937, from the Governor to the Board of Ministers transmitting the Secretary of State's Despatch, Ceylon No 763 of November 25, which refers to the memorandum addressed to the Governor by the Board of Ministers on March 19, 1937, and the previous memorandum therefrom dated April 21, 1933, as well as to a number of memorials from important communities, societies and individuals in the Island. The representations are grouped as follows:

- (1) a demand for some relaxation or diminution of the special powers of the Governor,
- (2) alteration in the method of selection of Ministers, and in the relations between Ministers, Executive Committees and the State Council,
- (3) changes in the arrangements for the representation of minority communities, and in
- (4) the franchise.

As regards (1) the Secretary of State expressed himself as in entire accord with his predecessors that the time was not ripe for any relaxation of the powers of the Governor, but that they required to be more clearly defined. In regard to (2), (3) and (4) the Minister realised the desirability of some modification of those provisions of the Constitution which have not proved in practice so successful as had been hoped by their originators and invited the Governor's recommendations, after ascertaining the views of all sections in the Island thereon. The Secretary of State said, however, that the question of the Governor's powers was one of more immediate urgency. The Secretary of State then went on to refer to the attempts which had been made by the State Council to deprive the Governor of his powers of appointment, promotion and disciplinary control of public officers vested in him by the Ceylon (State

¹ Ceylon Government Press, Colombo, 1938

Council) Order in Council 1931¹ Reference was then made to the powers under the Order in Council reserving to the Secretary of State the final decision in all matters affecting the salary, etc., of all public officers in Ceylon whose appointment was subject to his approval. In order to enable the Governor to exercise his responsibilities under the Order and to enforce the Secretary of State's decisions under Article 87, provision is made in Article 22 for effect to be given to the measures which the Governor considers essential. The Order in Council prescribed the observance of certain formalities preliminary to the exercise by the Governor of his legislative powers. The necessity, however, for a declaration of paramount importance in cases not covered by Article 87 (4) had tended to limit the Governor's powers in a measure not contemplated. He therefore felt it necessary to adopt provisions based upon Section 44 of the Government of India Act, 1935,² and to give the Governor powers of legislation to be exercised when he considers it necessary "in the interests of public order, public faith or other essentials of good government." His Majesty would therefore be advised to amend Article 22 of the Ceylon (State Council) Order in Council. The Secretary of State, in conclusion, stated that he did not intend to diminish in any way the legitimate exercise of the powers given to Ministers or to the State Council by the Order in Council of 1931, but only to prevent the encroachment on the powers which it was intended by that Order and by the recommendations of the Special Commission to reserve to the Governor and to the Secretary of State.

The Governor then by letter³ addressed to the Chairman of the Board of Ministers forwarded for the information of such Board, copy of the Secretary of State's Despatch, Ceylon No. 820 of December 16, 1937, transmitting copies of the Order in Council amending the Ceylon (State Council) Order in Council, 1931, the Secretary of State asking the Governor to inform him the date on which such Order was to be brought into force.

The Ceylon (State Council) Amendment Order in Council⁴ revokes Articles 22 and 23 of the principal Order⁵ and substitutes two new Articles embodying the following provisions:

¹ Articles 86 and 87 which deal respectively with—(86) the appointment, promotion, transfer, dismissal and disciplinary control of public officers vested in the Governor with power of delegation, and (87) the preservation of conditions of service of public officers.

² 26 Geo V, c 2

⁴ Article 2

³ No C. 34 dd Jan 6, 1938.

⁵ Ceylon (State Council) Order in Council, 1931.

Article 22 empowers the Governor whenever he considers it necessary in the interests of public order, public faith, or other essentials of good government, or to give effect to any of the provisions of this Order, that provision should be made by legislation, by message (which is to have priority and to be read at the next Council meeting) to explain to the State Council addressed to its Clerk the circumstances which in the opinion of His Excellency render legislation necessary, and either—

- (a) enact forthwith, as a Governor's Ordinance, a Bill containing such provisions as he may consider necessary; or
- (b) attach to his message a draft of the Bill which he considers necessary

Where the Governor takes such action as is mentioned in paragraph (b) he may at any time after a period of one month reckoned from the date upon which he signed the message, enact, as a Governor's Ordinance, the Bill proposed by him to the State Council either in the form of the draft attached to the message or with such amendments as he deems necessary, but before doing so he shall consider any address which may have been presented to him within the said period by the State Council with reference to the Bill or to amendments suggested to be made therein

Any such Ordinance (which is expressed to be enacted by the Governor) upon signature is to be of the same force as an Ordinance of the Council and to be subject to the power of disallowance

Article 23 requires the Governor to report to the Secretary of State the reasons for the enactment of a Governor's Ordinance, and should any member object to any such Ordinance enacted under paragraph (a) above mentioned, within seven days of the reading of the message, he may submit to the Governor a statement in writing of his reasons for so objecting, whereupon the Governor appends to his report a copy of such statement and in respect of any such Governor's Ordinance under paragraph (b) above mentioned a copy of any address above referred to.

Article 3 of the Amending Order requires the presence of a quorum upon the reading in the Council of such a Governor's Message and Article 4 repeals Article 87 (4) of the principal Order, which Article deals with the preservation of conditions of service of public officers, and substitutes the following.

- (4) Any provision necessary in order to preserve rights or privileges which by this Article may not be varied without the approval of the Secretary of State shall, to the extent required by any decision of the Secretary of State, be deemed to be necessary to give effect to the provisions of this Order within the meaning of Article 22

The Board of Ministers then, through the Governor, asked the Secretary of State to stay the operation of the new Order

until they had had the opportunity of submitting their views¹ To this the Governor replied by informing the Board of his duty to bring an Order of His Majesty in Council into operation immediately after its receipt and stayed his hand in regard to its promulgation until the reading of the despatch in the State Council, at the same time expressing his regret that the terms of the Order had "through some agency unknown to me appeared in the local press before the communication of the despatch to the State Council"

To this letter of the Governor, the Acting Vice-Chairman of the Board of Ministers replied on January 21, 1938, stating that the Order in Council represented a definite infringement of the rights and privileges hitherto enjoyed by the State Council and that no action taken by the State Council was of sufficient gravity to justify the Order in Council; and stating that "It is our duty therefore to advise Your Excellency that in the public interest the Order in Council should be withdrawn" The Governor was asked to transmit these representations by cable to the Secretary of State, which was duly done on the date abovementioned, the Governor, by despatch No 37 four days later, reporting what he had done and reciting the facts of the situation The Governor also forwarded by despatch No 52 dated January 29 *idem* a Memorandum by the Acting Minister (Mr. G G Ponnambalam), who did not share the views of his colleagues.

The last letter in the correspondence is a despatch No. 70 dated February 16, 1938, from the Secretary of State to the Governor reciting the facts in connection with the subject and saying that it had long been clear to his predecessors and to himself that there was a tendency on the part of certain elements in the State Council to encroach on the Governor's rightful powers, especially in relation to the public service. The despatch concluded by stating that the time was not ripe for any diminution of the powers reserved to the Governor and the Secretary of State by the Order of 1931 and that he could not consider its withdrawal, but at the same time the issue of the Order in no way prejudiced the consideration of any proposals which Ministers might put forward for the amendment of the Constitution in other directions, provided that no impairment of the Governor's powers was involved.

Motions of protest against the action of the Secretary of State in advising His Majesty the King to promulgate the Ceylon (State Council) Amendment Order in Council, 1937,

¹ Letter No B M. 29/31 dd Jan. 13, 1938.

were discussed at great length¹ in the State Council on January 18 and 19 and on March 1, 2, 3 and 4, 1938, on which last mentioned date the following motion was negatived on division.

That this House emphatically protests against the action of the Secretary of State in advising His Majesty the King to promulgate the Ceylon (State Council) Amendment Order in Council, 1937, without giving this Council and the country an opportunity of expressing their views and respectfully requests His Majesty the King to repeal this Order which is calculated to curtail the powers and privileges granted to this Council and the country under the Ceylon (State Council) Order in Council, 1931, and has undermined the confidence of the people in British justice and fair play.

On June 1, 1938, the following Motion moved by the Member for Balapitiya (Mr. F. de Zoysa) was carried.

"In the opinion of this Council the 'moderate improvement of the salaries of police officers' proposed in the Motion which was rejected by this Council on November 3, 1936, is not of paramount importance and should not be certified by His Excellency the Governor under Article 22 of the Ceylon (State Council) Order in Council, 1931."

Air-Mail Rates.—Members of the Society are asked to note that air-mail is compulsory for letters to South Africa from the countries mentioned below, and the rates are as follows:

| <i>From.</i> | <i>Per ½ oz.</i> |
|--------------------------|-------------------|
| United Kingdom | 1½d. |
| Canada | 6 cents |
| Australia | 5d. ² |
| New Zealand | 1½d. ² |
| India | 2½ annas. |
| Ceylon | 20 centimes |

October 29, 1938.

¹ Ceylon Deb. 1938, 43-68, 621-692, 665-704 707-746, and 748-756

² With option of surface mail at 2d. *per oz*

II. THE REGENCY ACT, 1937¹

BY THE EDITOR

NORMALLY any references in the JOURNAL to constitutional movements or unusual instances of Parliamentary procedure occurring in the Parliaments of the Empire during the year under review in each issue, are dealt with under "Editorial." In this case, however, even an outline on the subject was found to be too lengthy for treatment in that manner.

Upon a perusal of the debates and proceedings of the Imperial Parliament in connection with the passage of this Measure through the Houses of Lords and Commons, two factors emerge as prompting its introduction—namely, the new situation created by a change in the occupant of the Throne and the desire for a comprehensive scheme in regard to the question of Regency, in place of dealing separately with each case as it arose

In the Royal Message to both Houses, later translated into the Preamble of the Bill, His Majesty, among other matters, referred to it being

within your recollection that during my beloved father's reign it became necessary to make temporary provision to meet the difficulties which arose in relation to the exercise of the Royal authority at the time of his illness in the year 1928 and of his last illness in the month of January, 1936,

and that

My father had, after his illness in the year 1928, given much thought to the inconvenience which resulted, or might result, from the absence of statutory provision for dealing with any incapacity which might overtake the Sovereign, with the Accession of the Sovereign during infancy, and with the absence of the Sovereign from the realm, and it was his intention, if he had lived, as it was also the intention of my predecessor to address a message to you drawing attention to the matters to which I have referred

His Majesty recommended that Parliament should take into consideration the making of permanent provision for the above purposes.

It is not proposed to go into the whole question or history of Regency in relation to our Sovereigns, but to take the reader with us in the observation of the passage of this Bill through both Houses at Westminster

¹ 1 Edw. VIII and 1 Geo VI, c 16.

First, the Bill¹ originated, as has been seen, upon a written Message from the King, and being under Royal Sign Manual, the Message to the Commons was brought in this case by the Prime Minister (then the Rt Hon Stanley Baldwin), who appeared at the Bar, where he informed Mr Speaker that he had a Message from the King to that House signed by His Majesty. Whereupon he was desired by Mr Speaker to bring it up to the Chair, where he delivered it to Mr Speaker, who read it at length to the House, all Members being uncovered, as is the case with messages from the Crown under the Sign Manual, except in certain instances.

In the Lords the procedure was the same in that all Peers were uncovered, but the Message was delivered by a Peer charged therewith, who acquainted that House from his place that he had a message under the Royal Sign Manual, "which His Majesty had commanded him to deliver to their Lordships"² In this instance the bearer of the Message was the Lord Chamberlain (Rt. Hon. the Earl of Cromer, G C B, etc.). The Lord Chancellor then read the Message at length, after which it is read "or supposed to be read by the Clerk"³ The Message was delivered to both Houses on January 26,⁴ and immediately following the reading of the Message in the Commons the Prime Minister moved that an humble Address be presented to His Majesty assuring Him that the House would "with the least possible delay" proceed to the discussion of the important question and provide such measures "as appear necessary or expedient for securing the purpose to which His Majesty has alluded." Question was then put and agreed to *nemine contradicente* and the Address in reply was ordered to be presented to His Majesty by Privy Councillors or Members of His Majesty's Household.

In the Lords the Message was taken into consideration on the following day,⁵ when a similar Address, but in other words, was agreed to *nemine dissentiente*⁶ (to use the phrase peculiar to that House), the said Address to be presented to His Majesty "by the Lords with White Staves." The Lord Privy Seal (Rt. Hon Viscount Halifax, K G, etc.), in moving for the Address in the Lords, said. "Their Lordships will, I understand, receive in due course from another place the Bill con-

¹ H C 68 The Bill does not of course alter "the law touching the Succession to the Throne or the Royal Style and Titles" to quote from the Statute of Westminster (22 Geo V, c 4)

² May 13th Ed., 596, 597

³ 66 L J 958 (*vide* May, *Ib*).

⁴ 104 H L Deb. 5 s 1, 2, 319 H C. *ib*, 766-767

⁵ 104 H L Deb. 5. s 2.

⁶ *Ib*, 8-9

taining the proposals of His Majesty's Government to meet His Majesty's wishes."

The full texts of the Royal Message and the Addresses in reply thereto from both Houses will be found upon reference to the respective *Hansards* as given in the footnotes hereto.

The Bill was presented in the Commons on January 27,¹ and ordered to be read a Second time on the following day. As reference for those who wish to study this subject in detail, the dates of the subsequent stages in the two Houses were as follow: in the Commons . 2 R February 2,² *C.W.H.*, *Cons.* and 3 R. 4, *idem*,³ in the Lords . 2 R February 10,⁴ *C.W.H.* 16, *idem*,⁵ *Cons.* 18 *idem*,⁶ and 3 R 23 *idem*.⁷

The Lords' amendments were considered and agreed to by the Commons on March 1,⁸ and *R.A.* was signified by Royal Commission in the Lords on March 19, Mr. Speaker announcing it upon his return to the Commons on the same day.

The Minister in charge of the Bill in the Commons was the Secretary of State for the Home Department (Rt. Hon. Sir John Simon, G C S I, K C., etc.), who, in moving the Second Reading, referred to some occasions in Parliamentary history when Regency Bills had passed into law, such as in the reigns of Henry VIII (1536), George II (1751), George III (1811), William IV (1830) and George V (1910), giving briefly reasons in each case. The Minister during the course of his speech, which is both instructive and illuminating to the constitutional student, suggested two relevant reflections in connection with the subject, first, that their ancient common law proceeded on the assumption that the Sovereign was always available there in that country, in good health of body and mind and therefore ready promptly to discharge day by day his Royal functions—sometimes called by the old lawyers, "the doctrine of perfection"—which led to the conclusion that however youthful the Monarch might be, he was treated in law as always old enough to undertake and discharge his duties; and that when occasion arose, or seemed likely to arise, when, either from his ill-health or his incapability of carrying out his duties, the common law had then always to be supplemented by legislation.

The second reflection was that Regency Bills had always been passed in connection with or in contemplation of some special case. The present Bill, however, sought to make a general provision, applicable as occasions arose, and so avoid

¹ 322 H C Deb 5 s. 946

⁴ 104 H L Deb 5. s. 88-99.

⁷ *Ib.*, 279-282

² *Ib.*, 1449-1475

⁵ *Ib.*, 150-169

⁸ 321 H C. Deb 5. s. 107-111.

³ *Ib.*, 1805-1853.

⁶ *Ib.*, 225-226

legislation having to be passed in a hurry on each occasion as it arose. The three contingencies, continued the Minister, involved in the Bill were (1) the minority of the Sovereign on his accession, (2) any incapacity of the Sovereign occurring during his reign, and (3) his absence from the Kingdom. The Minister remarked that the range of the Measure had not overlooked the principles recognized as governing the relation between laws passed by the United Kingdom Parliament and those of the Dominions. The Bill dealt with the exercise of the Royal functions, and when an Act it would be effective in the United Kingdom and the Colonies. The question of introducing legislation of this kind had been informally discussed with the Dominion Prime Ministers in London in May, 1935. The provisions contemplated were explained and discussed with such Prime Ministers at that date and found generally acceptable to them. So far as the Dominions were concerned, continued the Minister, each such Government would have to decide whether any legislation was necessary. Different lines were therefore being followed from those in the Abdication Act¹ of December, 1936. That Act was a law "touching the Succession to the Throne"—to quote from the Statute of Westminster,² therefore, observed the Minister, it was proper that in the preamble to the Abdication Act, Dominion assent should be indicated. But the present Bill was only a piece of machinery to be used, if, for one reason or another, the existing Sovereign could not for the moment discharge all his normal functions. After consultation with the Dominions, it had been agreed that it would be better and simpler to take the course of legislating there and then in the United Kingdom Parliament (or as it is more commonly referred to in the Dominions, "the Imperial Parliament") in terms of the Bill before it, and of recognizing that the Dominions would prefer to take no positive action unless and until the occasion arose.

The Minister further remarked that there was a very good practical reason why the course, in which the Dominion Governments and the Imperial Government concurred, should be followed, and it was that a Dominion which had a Governor-General got its ordinary day-by-day business done in the name of the Crown by the executive action of the Governor-General. The state of health or absence of the Sovereign did not hold up the machinery at all. Therefore, continued the Minister,

¹ 1 Edw VIII, c. 3

² 22 Geo. V, c. 4; *see also* JOURNAL, Vol. V, 63-73.

the incapacity of the Sovereign for the time being to discharge his day-to-day functions had not the importance to the Dominions that it had to the United Kingdom. As was remarked in a leader of *The Times*,¹ in each self-governing Dominion the King's status is exactly the same as in the United Kingdom; yet in each he is as a rule physically absent, and his powers are exercised by a personage who is none the less a Regent of the Dominion because his official title is Governor-General.

When the Question for the Second Reading was put to the House, a division was claimed, the voting being Ayes, 305, Noes, 1.

In dealing with the details of the Bill and its amendment during its passage through the two Houses, certain amendments were made, some of which may not be without special interest.

Clause 1 (Regency while the Sovereign is under eighteen) appointed a Regent if the Sovereign on Accession is under eighteen years of age, which is the age which has always been acknowledged as the attainment of "majority" in the case of our Sovereigns. This Clause should be read with Clause 3.

Clause 2 (Regency during total incapacity of the Sovereign) provided for the Regency during the total incapacity of the Sovereign from whatever cause, and dealt with the second of the three contingencies, already referred to, namely the possibility of the total physical, or it might be mental incapacity of the Sovereign during his reign, six persons being named in the Clause as the persons, "three or more" of whom are empowered to "declare in writing that they are satisfied on the evidence of physicians or otherwise, that the Sovereign is by reason of infirmity of mind or body wholly incapable for the time being of performing the royal functions," and establish the necessity for a Regency being created. Subsection (2) of this Clause required such declarations to be made to the Privy Council and "communicated to the Governments of His Majesty's Dominions and to the Government of India."

The six persons above mentioned were, the wife or husband of the Sovereign, the person (excluding anyone disqualified under the Act from becoming Regent) next in succession to the Crown, the Lord Chancellor, the Speaker of the House of Commons, the Lord Chief Justice of England, and the Master of the Rolls. The Commons, however, in Committee increased the "three or more" to four or more, but on Report reversed its decision and excluded the person next in succession

¹ January 29, 1937

to the Crown on the ground of the danger of personal interest. Certain other amendments to the Clause were made in both Houses as to the evidence upon which the five persons are to act. The Lords further amended the Clause in regard to the availability of the Sovereign to discharge the royal functions.

Clause 3 (The Regent) provided that the Regent must be the next person in the line of succession to the Crown being of full age, namely (unlike that laid down in the case of the Sovereign) twenty-one years and who is subject to no disqualification, such as not being a British Subject, not resident in some part of the United Kingdom nor a person who would be disqualified under the Act of Settlement¹. Residence in the United Kingdom, however, was altered by the Commons to "domiciled in some part of the United Kingdom."

Clause 4 (Oaths to be taken by, and limitation of power of, Regent) requires to be read with the Schedule to the Bill setting out the three Oaths, namely, of allegiance, of office, and of the maintenance of the Protestant faith, which last named was amended during the close review of the Bill in the Lords in order to make the position of England also clear. In the Bill as drafted this oath was in a more expanded form than in the Regency Act of 1910,² due to the alteration in the Accession Oath consequent upon the passing of the Church of Scotland Act of 1921³ and to the ensuing union of the Church of Scotland and the United Free Church. After the amendment made by the Lords, and concurred in by the Commons, this Oath now reads as follows:

3. I swear that I will inviolably maintain and preserve in England and in Scotland the Settlement of the true Protestant religion as established by law in England and as established in Scotland by the laws made in Scotland in prosecution of the Claim of Right, and particularly by an Act intituled "an Act for Securing the Protestant Religion and Presbyterian Church Government" and by the Acts passed in the Parliament of both Kingdoms for the Union of the two Kingdoms, together with the Government, Worship, Discipline, Rights, and Privileges of the Church of Scotland. So help me God

Under Sub-clause (2) of Clause 4, the Regent is not allowed to assent to any Bill changing the order of Succession to the Crown, or for repealing or altering the "Act for Securing the Protestant Religion and Presbyterian Church Government in Scotland."⁴

¹ 12 and 13 Will. III, c. 2

³ 11 and 12 Geo. V, c. 29

² 10 Edw. VII and 1 Geo. V, c. 26.

⁴ 5 Anne, c. 8, Art. XXV, 2.

Clause 5 (Guardianship, etc., of Sovereign during Regency). Under this Clause, unless Parliament otherwise provides, if the Sovereign is under eighteen years and unmarried His mother has the guardianship of His person, or if married and under eighteen, or declared by the act incapable for the time being of performing the royal functions, then the wife or husband of the Sovereign acts as guardian. The Lords amended this Clause by substituting a new paragraph (c) for the one in the Bill, reading as follows

(c) The Regent shall, save in the cases aforesaid, have the guardianship of the person of the Sovereign, and the property of the Sovereign, except any private property which in accordance with the terms of any trust affecting it is to be administered by some other person, shall be administered by the Regent.

Clause 6 (Power to delegate royal functions to "Counsellors of State") dealt with the third contingency, namely the absence of the Sovereign from the United Kingdom and also with the event of illness not so extreme as to amount to complete incapacity, but nevertheless such as to make it necessary for day-by-day functions to be discharged in the King's name by someone else. If there was a case of infirmity of mind or body not amounting to complete incapacity then no Regent would be appointed, but certain royal functions would be discharged by Counsellors, subject to certain limitations under the Act. In the course of this Clause being used in the intended absence of the Sovereign from the United Kingdom, remarked the Minister, then the Letters Patent would reserve to the Sovereign the personal exercise of his functions in so far as that was found to be practicable. The Commons amended this Clause in certain particulars, one being the exclusion of the Regent from such Counsellors of State, thus conforming to a similar principle applied by amendment to Clause 2. The five Counsellors are now, therefore, the Sovereign's wife or husband, and, at present, the Dukes of Gloucester and Kent, the Princess Royal and the Duke of Connaught.

Clause 7 repeats the Lord Justices Act, 1837,¹ and Clause 8, the title Clause, interpreted "royal functions" as including all powers and authorities belonging to the Crown, whether prerogative or statutory, together with the receiving of any homage required to be done to his Majesty.

Certain other amendments were made in the Commons at the Report Stage.

Upon the Third Reading in the Commons, the Attorney

¹ 7 Will IV and 1 Vict, c. 72

General in quoting certain sentences in the speech of the Minister upon moving the Second Reading, relating to the Bill and the Dominions, remarked that the Dominions had been kept informed of what the Imperial Government had been doing and fully agreed to it passing the Bill, the exact position in regard to each Dominion being a matter much better left for them to consider and for them to make any statement about in the first instance.

The Bill was under close review in the House of Lords, which made certain amendments (in addition to those which have been dealt with in detail) removing doubts and in pursuance of the consequential effects of amendments made by the Commons.

An interesting amendment—not, however, agreed to—was moved in the Lords by Lord Dickinson, namely—to insert after “shall” in sub-clause (1) of Clause 3 (The Regent), the words “unless Parliament otherwise determines.” The noble Lord considered the Bill too rigid in its provisions regulating who should have the custody of the infant Sovereign and the management of his estate. He thought the Bill tied the hands of Parliament in regard to the choice of Regent and quoted instances of departures which had been made in history from the practice the Bill sought to lay down. As, however, was pointed out by another noble Lord, the automatic system in regard to the Royal Succession was comparatively recent in the history of the monarchical system, which used to be more selective for obvious reasons.

The Lords’ amendments were duly communicated to the Commons and concurred in. The debate in both Houses upon this Bill presents many interesting features to the constitutional student and is well worthy of more detailed study by direct reference to the *Hansards* of both Houses.

III. HOUSE OF COMMONS PROCEDURE RELATING TO COMMITTEE MONEY RESOLUTIONS

BY THE EDITOR

ONE of the most important functions of Parliament under the British constitutional system is its control over public money.¹ The earlier pages of our history record many contests between the Monarch and his Parliament over the former's demands for public money both for national and private purposes. It was largely these ever-increasing and often unreasonable and burdensome demands which brought about the Civil War of 1642-1651 as well as the "bloodless Revolution" of 1688, and caused the passing of those two great charters of British Liberty, the Petition of Right (1628) and the Bill of Rights (1689). One outstanding consequence of this age-long contest between the Crown and Parliament has been that the Monarch's need of public money gradually came to be used by Parliament as the fulcrum upon which to rest the lever to secure further powers and privileges.

Passing to another sphere of the British Constitution, control over public money has also frequently been the cause of disagreement and dispute between the two Houses of Parliament themselves, owing to the insistence by the House of Lords upon its amendments dealing with public money, which the House of Commons claimed were an infringement of its privileges. This field of dispute, however, of later years has been cleared to some extent of many of its difficulties by the passing of the Parliament Act of 1911.

The relationship between the three Estates of the Realm, in the respective exercise of their particular constitutional functions in regard to the control over public money, has been described as the Crown (through its Ministerial Executive) requests, the Commons grant, and the Lords assent. Much of the financial procedure between these two Houses, however, affords yet further instance of the many advantages of working under what is practically an unwritten Constitution, as the Commons is able to waive its privileges, with or without recording a special entry in its Journals, by allowing Lords' amendments of incidental monetary provisions in Bills not coming within the scope of the Parliament Act, which amend-

¹ *i.e.*, Government Taxation, Revenue and Expenditure.

ments would otherwise be open to objection by the Commons on constitutional grounds

The two Houses of most Oversea Parliaments, however, under their Constitutions, are uncompromisingly confronted by the rigidity of the Written word, which denies them that elasticity of procedure enjoyed by their counterparts at Westminster. In consequence, the practice of what has come to be known as "the process of suggestion"¹ has been conceived and successfully applied in some of the Oversea Parliaments, a procedure by which the Upper House is allowed a hint in regard to the alteration by reduction in the monetary provisions of Bills, which provisions such House cannot, under the Constitution, amend. This hint the Lower House may either accept and act upon by making the necessary amendment, or abstain from action, as it may deem fit

In this Article, however, we have to deal with yet another aspect of Parliamentary financial procedure, namely, the facilities of the private Member to move amendments in Bills which, although not coming under the sway either of the Committee of Ways and Means, or that of Supply, yet, under the Standing Orders of the House of Commons, require the authority of an antecedent Money Resolution originating in a Committee of the Whole House

The instance which ultimately brought about the agitation which is the subject of this Article can perhaps be said to have arisen owing to the difficulties experienced by the private Member in regard to amendment of the Special Areas Bill in 1937.

As the principle involved is one which is of interest to Lower Houses throughout the Empire, it is proposed to go into the matter fully. For those who desire a closer study of the subject the footnotes will serve as a guide

For purposes of ready reference, the relative Standing Orders of the House of Commons on this subject are given below, together with the dates on which they were passed and/or amended, although some of the principles these Orders embody have existed for centuries and are part of the British Constitution itself:

Standing Orders.

*Public Money.*²

63 This House will receive no petition for any sum relating to public service or proceed upon any motion for a grant or charge upon the public revenue, whether payable out of the

¹ See JOURNAL, Vols. I, 31-36, 81-90, II, 18

² S.O.'s 13-15 deal with the Committees of Supply and Ways and Means.

consolidated fund or out of money to be provided by parliament, unless recommended from the crown (June 11, 1713, June 25, 1852, March 20, 1866)

64. This House will not proceed upon any petition, motion, or bill, for granting any money, or for releasing or compounding any sum of money owing to the crown, but in a committee of the whole House (March 29, 1707)

65 This House will not receive any petition for compounding any sum of money owing to the crown, upon any branch of the revenue, without a certificate from the proper officer or officers annexed to the said petition, stating the debt, what prosecutions have been made for the recovery of such debt, and setting forth how much the petitioner and his security are able to satisfy thereof (March 25, 1715)

66 This House will not proceed upon any motion for an address to the crown, praying that any money may be issued, or that any expense may be incurred, but in a committee of the whole House. (February 22, 1821)

67 This House will not receive any petition, or proceed upon any motion for a charge upon the revenues of India, but what is recommended by the crown (July 21, 1856)

68 If any motion be made in the House for any aid, grant, or charge upon the public revenue, whether payable out of the consolidated fund or out of money to be provided by parliament, or for any charge upon the people, the consideration and debate thereof shall not be presently entered upon, but shall be adjourned till such further day as the House shall think fit to appoint, and then it shall be referred to a committee of the whole House before any resolution or vote of the House do pass therein (March 20, 1866)

69 When notice has been given of a resolution authorizing expenditure in connection with a bill, the House may if the recommendation of the crown is signified thereto, at any time after such notice appears on the paper resolve itself into committee to consider the resolution (February 20, 1919, and June 21, 1922)¹

70 A resolution authorizing the issue of money out of the consolidated fund reported from the committee of ways and means may be considered forthwith by the House, and the

¹ The amendments made in this Order in 1922 are shown below, the omissions within [square brackets] and the insertion underlined

[Notwithstanding any Standing Order or custom of the House if notice is] When Notice has been given of a Resolution authorizing expenditure in connection with a Bill, the House may, if the recommendation of the Crown is signified thereto, at any time after such notice appears on the Paper resolve itself into Committee to consider the Resolution, [and the Resolution when reported, may be considered forthwith by the House]. 155 H.C. Deb. 5. s. 1469-1470.

consideration on report and third reading of a bill ordered to be brought in upon such a resolution or resolutions may be taken forthwith as soon as the bill has been reported from committee of the whole House. (February 20, 1919)

It is, however, with S.O. 68 and 69 that we are specially concerned in this Article, although S.O.'s 63 to 66 have also a distinct bearing on the subject, in fact, so important are their principles, that in the Order of Reference setting up the Select Committee of 1937, with whose report we shall later deal, the House of Commons was particular to state that the inquiry was instituted "subject to the unimpaired maintenance of the principles embodied in" such Orders.

The Agitation in the Commons.

For some years past the rights of the Private Member in regard to his scope of amendment of Committee Financial Resolutions and in the corresponding provisions of Bills initiated by them, have caused the House of Commons some concern; in fact, in 1932¹ a former Select Committee on the subject was appointed, but its Report not acted upon. During the year under review in this volume, however, growing dissatisfaction among private Members was evident, the matter coming to a head upon the Financial Resolution for the Special Areas (Amendment)² Bill, an extension of the Act of 1934,³ the Financial Resolution to which Bill ruled out amendments thereto, extending the areas thereunder or to put them in charge of a special Minister

On March 8,⁴ the Leader of the Opposition (Rt. Hon. C. R. Atlee) moved the following Motion

That the Standing Orders relating to public business be amended by the omission of Standing Order No. 69

In his introductory speech⁵ Mr Atlee observed that it really was a question as to the way in which the machinery of the House was being utilized "This House," he said,

"has never been a mere assembly for registration. It has never been a mere debating society. It has never been a House which the Government use as an instrument of registration. . . . The Members have shaped legislative proposals. A Bill . . . although it is a Government's Bill . . . has been framed by the co-operation of the Members of this House Therefore every Bill that goes through the House becomes in that way

¹ See JOURNAL, Vol. I, 42-44

² 25 Geo. V, c. 1

³ 321 *ib.*, 815-823

⁴ 1 Edw VIII and 1 Geo VI, c. 31.

⁵ 321 H C Deb 5 s. 815-932.

the work of the whole House. The importance of that procedure is that the experience and ideas of the Members of the House are brought into the common pool. That is the traditional British and democratic method."

The hon. Member remarked that there were two elements to be considered. First, the King's Recommendation, without which a demand for the imposition of a charge cannot go forward, and then the Financial Resolution, which, once it is passed, becomes part of the Bill and cannot be amended. The old procedure of 1919, which lasted up to 1922, was that a Motion was made setting up a Committee to consider the Financial Resolution, and to that Motion was attached the King's Recommendation. The result of that was that that Motion, containing a certain amount of restriction on what the House could do having the King's Recommendation attached to it, laid down the limits, but the Financial Resolution which came forward had not the King's Recommendation attached and therefore could be amended. That was the prime distinction between that method of procedure and that which they were following at the present time. In 1919, however, it was decided to short-circuit the procedure. The Motion to set up a Committee had disappeared and what they had now was a Financial Resolution to which the King's Recommendation was attached.

In the early days, continued the Member, the practice was to draw the Motion very widely and to confine it strictly to the financial parts of the Measure, those clauses being printed in italics. The result of the new procedure, however, had in effect made the Financial Resolution unamendable, as only the Government in whose hands the King's Recommendation rests could amend such Resolution. But no great evil would have followed from that had the Financial Resolution been kept general. What had happened, however, had been that more and more the Financial Resolution had been extended, until, in effect, almost the whole of the operative clauses of a Bill were embraced by the Financial Resolution.

The hon. Member did not dissent from the contention that the Government must decide on the spending of money. The whole point which arose was as to the degree of particularity, and on Bill after Bill protest had been raised against the way in which Financial Resolutions were drawn. The hon. Member therefore urged a return to the former practice.

At this point another Member asked for Mr. Speaker's guidance as to whether the Financial Resolution contravened

the spirit of the Standing Orders Whereupon Mr Speaker said:¹

The hon Member asks me, on a point of order, whether I would make some remarks upon this Motion The House will understand that the course of this discussion has put me in rather a difficult position After all, my duty ever since I have occupied the Chair has been, to the best of my ability, to protect the minority in this House and to safeguard the rights of Members, and on any question of controversy, if it comes to controversy, it is very difficult for me to give a decision My business has always been to carry out in the letter and the spirit both the Rules of the House and the Standing Orders, where Standing Orders exist The House will recollect—certainly it is not allowed to forget—that I made some remarks on this question on 3rd December, 1934,² when the original Special Areas Bill was introduced

It must not be gathered that my remarks on that occasion can be used to cover every case The Bill on which my remarks were made, although on the same subject, was a different Bill from the present one, for which the Money Resolution is submitted The original Bill, in December, 1934, was an entirely new Bill, and what makes the difference is that it was not founded upon a Money Resolution It was not a Money Bill—I do not mean that in the sense of a Money Bill under the Parliament Act, but in the ordinary sense of the word Its main function was not money The Bill which we shall shortly be discussing, after the Money Resolution is disposed of, is founded on a Money Resolution As the Rt Hon Gentleman has said, it is distinct from the other Bill in that it is a continuing Bill, that is to say, it continues the old Bill, and is not a new Bill in any sense of the word I do not think my remarks on the occasion to which reference has been made can be held to have a bearing on the present situation, and, as far as a ruling is concerned, I must leave it entirely to the House to decide.

The Prime Minister (Rt Hon Stanley Baldwin) said³ there was a world of difference between ordinary legislation and legislation founded upon a Money Resolution Bills founded upon Money Resolutions were different in character and different in their origins, and there were very grave reasons why the Government of the day should adhere closely to the financial procedure involved The whole of our financial procedure was based upon S O 63, which reserved to the Government of the day the right of initiating or of increasing expenditure It was not a thing which should be in the hands of private Members or of private parties

The ancient Standing Order to which he had referred would

¹ *Ib*, 823, 824.

² 295 H C, Deb. 5 s 1235-1238.

³ 321 H.C. Deb. 5, s. 824 to 831.

be rendered completely valueless if the Crown's Recommendation was to be signified to a Financial Resolution brought in in such general terms as to enable Members of the House, other than Ministers, to initiate proposals for increasing the charge in ways that had not been contemplated when the Crown's Recommendation was given for the Resolution. To-day the calls upon the exchequer were so many and so various that it would be difficult for a Chancellor of the Exchequer to keep the nation's expenditure within its income if he did not possess this ancient power of limiting the initiative for expenditure to the Government.

However, they were conscious, continued the Prime Minister, that these Financial Resolutions did impose certain restrictions in debate, and they desired to do what was wanted, and they knew that some time they would be in Opposition, instructions had therefore been given during the last two years that the Resolutions should be drafted as flexibly as is consistent with the fundamental principle of that underlying S.O. 63.

If S.O. 69 were rescinded then the procedure would rest on S.O. 68, which was the procedure upon which they normally relied until 1922. Up to that time the procedure had been for the House to resolve that on a future day it would resolve itself into a Committee to consider a Motion for a charge. Standing Order 69 was one of the results of certain changes in procedure which were carried out following on the recommendations of a small but extraordinarily expert committee which had been examining the procedure with a view to quickening the pace. At that time the procedure which preceded the introduction of this peccant S.O. 69 involved three stages on separate days. There was the setting-up Resolution, to the effect that on a future day the House would resolve itself into a Committee to consider the voting of money for a certain object. That stage was formal and could take place immediately after Questions, or at the end of Public Business, and the King's Recommendation was given at that juncture. When the House went into Committee it considered the object in view and the passing of the Resolution, of which it was by no means the general practice to give notice on the Paper. The Resolution, more often than not, was read at the Table, and not put on the Paper as it is to-day. Then came the Report Stage, and the first proposal made in 1919 was that of an alternative procedure, and the purpose of the new Standing Order was expedition, namely, by doing away with the setting-up Resolution and providing that the Committee and Report Stages of a Money

Resolution could be taken on the same day. But the Standing Order was permissive. It was to apply only in cases where notice of the Resolution appeared on the Order Paper. That Standing Order was very like the one which emerged in its final form in 1922.

What brought S.O. 69 into use—which showed what private Members could do—was the decision given by the then Deputy-Chairman of Ways and Means,¹ which was that the effective Resolution which governed a Bill was the first one and not the second one, which, in practice, had always been the tighter and closer Resolution. In effect, that decision threw open a question which everyone thought had been settled for two centuries. It was after that decision that the practice which had subsisted ever since was made general. The King's Recommendation which the Deputy-Chairman said only covered the setting-up Resolution now applies to the actual Resolution which governs the Bill.

It was felt that with regard to the Special Areas this Resolution was restricted to the points which were fundamental to the

¹ During the consideration in Committee of the Whole House of a Money Resolution in connection with the Unemployment Insurance Bill, on March 30, 1922,* an hon. Member gave notice of an amendment† which would increase the charge.

Upon which the ruling of the Deputy Chairman of Committees (Rt. Hon. Sir Edwin Cornwall, Bart.) was

I have been asked whether it would be in order to move an Amendment which would increase the charge. It is a very old, in fact, one of the oldest traditions of this House, that a private Member cannot move an Amendment or a Motion which would increase the charge beyond the amount in the Motion put forward by a Minister of the Crown. But in this case the Resolution setting up this Committee and the Motion that is put down by the Minister of the Crown, with the King's Assent signified, are rather wide and, so far as I can read the Resolution, there is no limitation of the amount of money that might be moved in this Committee on this Resolution. It is often thought by Members of the Committee that the words of a Motion on the Paper are the governing words, but the words which govern this Committee are the words setting up this Committee, and the words setting up the Committee are.

"The Committee to consider of authorizing the payment out of moneys provided by Parliament of an increased contribution towards the unemployment benefit."†

There is no limitation there. The hon. Member for Govan (Mr. M. Maclean) has given me notice of an Amendment which would increase the charge. It is not within my power to move it out of order, because of the setting-up Resolution. When the Bill goes into Committee the Resolution that governs that Committee is the Resolution we pass, but the Resolution that governs us is the Resolution of the House setting up this Committee, and in it I see no limitation.

* 152 H.C. Deb. 5 s. 1586 to 1588

† *Ib.*, 1581

‡ *Ib.*, 1349. These are the opening words of the setting-up Resolution, and at the end thereof is—("King's Recommendation signified")

financing of the Government's proposals. The Bill itself was restricted to financial matters, and so much so that it required not only to be supported by a Financial Resolution but to be founded upon one. In regard to Bills founded upon Financial Resolutions, it is commonly the case that the Resolution is, and must be, largely identical with the Bill. If it were not so it would be giving the House a blank cheque instead of keeping the responsibility in the hands of the Government, with whom alone that responsibility should rest. As the Resolution had to cover the whole of the Bill, it was inevitable that this should generally be the case. As far as the alteration of procedure was concerned, the Prime Minister could not see that it would touch the principle, because what the Leader of the Opposition said would inevitably happen. Whatever Resolution was the pertinent Resolution governing the Bill would be drawn in such a way as to protect the right of the Government to initiate expenditure, and they would be as they were. "In view of those considerations," concluded the Prime Minister, "I regret I am unable to accept the Motion."

The hon. Member for Dundee (Mr. Dingle Foot) said¹ that the point with which they were concerned was not whether they should abrogate S.O. 63, but the choice between S.O. 68 and S.O. 69. They were not suggesting that private Members should be put in the way of temptation and have all sorts of opportunities of moving to increase the charge. Their criticism was that the Resolutions were used, not simply to limit expenditure and protect the public purse, but to determine both the purposes of the Bill which follows and the methods by which those purposes were to be carried out. That was an entirely different thing from merely giving protection to the public purse. A point which should be in the mind of every Member was that the old procedure served this House perfectly well up to 1919. It was not until that year that S.O. 69 was introduced and received its present form in 1922.

The original intention, as the Prime Minister had said, was that it might have been done in one day, but that was circumvented by Sir Frederick Banbury's amendment in 1922.² The whole reason that was given, and it was the only suggestion the House had, for making this change in 1919 and 1922, was to expedite the manner of dealing with Money Resolutions. It had never been suggested by anybody from the Front Bench at that time, and certainly it was never contemplated by the

¹ 321 II C Deb. 59831 to 836

² See footnote to S.O. 69, p. 99, *ante n.*

House of Commons, either in 1919 or 1922, that this new machinery would be used in the way in which in fact it had been used by successive Governments ever since

The number of Private Members' Bills which reached the Statute Book was very much smaller than it used to be, and if they were to reach the Statute Book at all, they could only deal with small and non-controversial matters, which meant that in recent years the initiative, with regard not simply to financial matters but to practically all legislation, had passed into the hands of the Executive of the day. It was therefore all the more important that Members should have every opportunity to scrutinize and examine all the Measures which the Government chose to bring forward. Members found themselves in this dilemma: they objected very strongly to some particular provision in a scheme, but were unable to express their objection in the Division Lobby without rejecting the scheme as a whole. It was precisely that difficulty in which Members were put when Money Resolutions were so tightly drawn.

There have been various practices adopted in recent years to deprive the House of Commons of the right to amend. If the Government was going to cut down the right of effective criticism in the House then the House simply became a machine for registering the decrees of an omnipotent executive.

The hon. Member for Antrim (Rt. Hon. Sir Hugh O'Neill), in recalling the procedure under the old Standing Orders, said¹ that there was first a formal setting-up Resolution that the House would, on a future day, resolve itself into a Committee to consider certain financial proposals. That was a formal stage. There was no notice of it on the Paper, for it was the kind of Motion that did not require notice, and he thought there was practically never any debate. At that stage, however, the King's Recommendation was signified by a Minister of the Crown. The next stage was that the actual Financial Resolution arising out of that setting up of the Committee appeared on the Paper. Instead of having, as they saw to-day, against it the words, "King's Recommendation to be signified," there were the words, "King's Recommendation signified" because that had been notified by a Minister at the time of setting up. If they were to go back to the old procedure before 1922, they would gain nothing at all, because it would be possible for the Government to draw their setting-up Resolution just as widely or narrowly as they liked. In fact, even if

¹ 321 H.C. Deb. 5. s. 836 to 838

S O. 69 were to go, the Leader of the Opposition would not gain any actual advantage from it. If Financial Resolutions to-day were drawn tighter and in greater detail than they used to be, the reason was not because there was no great desire to stifle discussion, but because the whole attitude of the House of Commons with regard to finance and expenditure had been completely altered in the last generation. In the old days a widely drawn Financial Resolution may have come up with possibly no limits to the expenditure proposed. It could be amended, and it was nearly always amended, if at all, by some Members who were exponents of economy. The reason for drawing up those Resolutions so widely was that there was not the tendency that there was to-day, both in the House and in the country, to demand greater expenditure for all kinds of things. Formerly, the House of Commons used to be regarded as the guardian of the public purse, but to-day it could more properly be described as the despoiler of the public purse. It was this changed attitude as regards expenditure in the House which was the real reason why it had become absolutely necessary for governments to draw their Financial Resolutions much more closely and in greater detail than before. The hon Member felt that in the present day, when there was so much expenditure, it was more necessary than ever in the history of Parliament to maintain unimpaired the great principle on which their financial procedure in the Commons rested, namely, that no proposal for expenditure could be made except upon the recommendation and responsibility of the Government. Under conditions to-day, concluded the hon. Member, the Government really had no alternative but to frame Financial Resolutions much more strictly than formerly.

The hon Member for North Aberdeen (Mr G. M. Garro Jones) observed¹ that S.O 69 provided a safety valve for the House. Standing Order 69 not only required them to cut the coat according to the cloth, but enabled the Government to decide in advance what the pattern of the coat was going to be. It was in the light of these considerations that the Select Committee on National Expenditure of 1919 proceeded to examine not the possibility of increasing the initiative and control of the executive but of diminishing both. There was a widespread feeling that there should be no further restriction upon the initiative of private Members. The House should mark well, continued the hon Member, that the Financial Resolution which was the proximate cause of the Motion before them was

¹ *Ib.*, 840.

of little service as a restriction upon expenditure. The House could not deduce from it whether they were to spend £10 or £10,000,000. The only restriction contained in the Resolution was under heading (d)¹ which limited the amount for loans to persons carrying on certain business, the limit being £2,000,000. There was no limit whatever upon the expenditure other than that one, and the amounts which were entirely unspecified could be expended under other heads.

The hon. Member for Aylesbury (Mr M. W. Beaumont) said² it was a mistake to believe that S.O. 68 gave more right of discussion than S.O. 69. The only difference was that the setting-up Resolution was drafted not by the Treasury but by the Public Bill Office. That was not a matter of obligation, but merely the practice. If S.O. 69 were repealed, there was nothing to prevent the Government having that setting-up Resolution drafted by the Treasury just as tightly as the Second Resolution. The hon. Member thought that the House should distinguish between Bills founded on Money Resolutions and Bills which a Money Resolution followed. When a Bill was founded on a Money Resolution, continued the hon. Member, it inevitably followed that the Financial Resolution must be drawn much tighter than if the Resolution followed a Second Reading, and quoted May³

Where the main object of a Bill is the creation of a Public Charge, resort must be had to this procedure, before the Bill is introduced, and upon the Resolution of the Committee of the whole House, when agreed to by the House, the Bill is ordered to be brought in.⁴ If the charge created by the Bill is a subsidiary feature resulting from the provisions it contains, the Royal Recommendation and preliminary Committee are not needed before the introduction of the Bill . .

The significance of that was, observed the Member, that when a Bill was founded on a Money Resolution, such Resolution must contain the main provisions of the Bill. On the general question of the drafting of Financial Resolutions, the House had a very serious complaint. Whether it was intended or not, the fact remained that discussion was unreasonably fettered. Matters arising on the Second Reading of the Bill were, in fact, prevented from having proper attention in Committee, and from having amendments moved in respect of them. The hon. Member suggested that the House should,

¹ *Ib.*, 997.

² *Ib.*, 855 to 859

³ 13 *Ed.* p. 506

⁴ 55 *C.J.* 396, 98 *Ib.*, 167, 101 *Ib.*, 615; 104 *Ib.*, 412, 113 *Ib.*, 31, 147 *Ib.*, 67, 79; 1 *Parl. Deb.* 4 s. 315.

after consideration, pass a Resolution laying down the broad lines upon which it wished Financial Resolutions to be founded, and it should be left to Mr. Speaker and the Officers of the House to see that Financial Resolutions came within those broad lines. In that way Members would have, if they had not at present, protection by Mr. Speaker when, in their view, a Financial Resolution was too narrowly drawn. By that method alone could the difficulty in which they were placed be met.

The hon. Member for Bolton (Sir C. Entwistle, K.C., M.C.) remarked¹ that the purpose of the Bill in question was to give money to certain interests in Special Areas, and therefore it had to be founded on a Financial Resolution. Surely if the general objects of the expenditure were not defined, it would be open to any hon. Member to move any amendment, however much it would increase the charge on the revenue, for any purpose connected with the broad objects of the Bill, which would be against the spirit of S O 63. The carrying of the Motion before the House would not improve matters but merely bring the House back to the procedure under S O 68.

The hon. Member for Yorkshire W R, Keighley (Rt. Hon. H. B. Lees-Smith), said² that it was since S O. 69 had been passed that there had been a continual series of complaints, debates and Speaker's Rulings. Standing Order 69 had been completely twisted out of the purpose for which it was introduced. The hon. Member drew attention to the effect on the nature of their debates of the exaggerated importance which was attached to Financial Resolutions. In case of many Bills they spent more time on the Financial Resolution than on all other stages. It was never intended that the real, vital debates should take place on the Financial Resolution. The whole procedure of the House was built up on the principle of having a Second Reading debate, and then a Committee Stage, during which one could move amendments, provided that they did not increase the charge on the public.

The Attorney-General (Rt. Hon. Sir Donald Somervell, O.B.E., K.C.), who closed the debate, remarked³ that before 1922 it had always been assumed that the latter detailed Resolution defined the limits within which amendments could subsequently be moved. In 1922, on the Unemployment Insurance Bill, the Deputy Chairman of that day ruled, to the surprise of the Committee, that it was not the detailed Resolution but the setting-up Resolution, when the King's Recom-

¹ 321 H C Deb 5 s. 879

² *Ib.*, 923-924, 926, 927

³ *Ib.*, 918, 920.

mendation was given, which laid down the lines within which amendments could subsequently be in order. That setting-up Resolution was drawn in the widest and most general terms, which extended the area within which amendments would be in order beyond anything that had been contemplated prior to that date, and it was because that Ruling introduced an element into the procedure which had not previously been contemplated, that as from that date successive Governments had adopted S O. 69 instead of the old procedure

The kernel of the problem, continued the Attorney-General, was S.O. 63, which prevented private Members making Motions for the grant or use of public money, and the principle that Standing Order embodied had been one of the great factors in making the House of Commons the responsible and effective instrument of Government which it was. If S O. 63 was to be preserved it must be preserved so far as Bills were concerned in cases where those Bills involved the spending of money, whether that was the main primary object of the Bill or whether it was only the subsidiary object.

Continuing, the Attorney-General said they were dealing with a Bill based on a Financial Resolution, and that if anybody referred to the debates of the last century they would see that the point was raised as to whether amendments were in order which increased the charge under a Bill if they were within the Financial Resolution. The Ruling of the Chairman of those days was that amendments increasing the charge under a Bill might be in order if they were within the Financial Resolution, but it was felt that such amendments, though in order, were not really within the spirit of S O. 63. In regard to the suggestions made by certain Members, he was authorized to inform the House that the Government was prepared to consider the matter, and if, after discussion with the Leader of the Opposition, it seemed desirable to set up a Select Committee to consider the working of the Standing Order, the Government was prepared to do so.

Question was then put on the Motion, the voting being: Ayes, 136, Noes, 208.

The Select Committee.

On March 23¹ a question was asked (by *Private Notice*) by the Leader of the Opposition as to whether the Government had any proposals to make in regard to the proposed Select Commit-

¹ 321 H.C. Deb. 5 s. 2759

tee, to which the Prime Minister replied in the affirmative, and on April 26¹ the House Ordered.

That a Select Committee be appointed to consider the working of the Standing Orders relating to public money and, subject to the unimpaired maintenance of the principles embodied in Standing Orders Nos 63 to 66 (both inclusive), to report as to whether any or what changes are desirable in Standing Orders No 68 and No 69 or in the procedure relating to Money Resolutions,

the Committee to have power to send for persons, papers and records and five to be the quorum

On July 9² it was Ordered that the Report of the Select Committee on Procedure in Session 1931-32 be referred to the Select Committee relating to Money Resolutions -

On July 13³ the Report⁴ from the Select Committee relating to Money Resolutions with Minutes of Evidence and Appendices was brought up and Ordered to lie upon the Table and to be printed

The Report, together with Minutes of Evidence and Appendices, covers 179 pp. The Select Committee sat ten times and heard thirteen witnesses, the evidence containing 1,677 questions. Part I of the Appendix gives the Memorandum by Mr. Speaker (which is given in full later), Part 2, the Directions given by the Treasury in 1919 regarding responsibility for Money Resolutions, signed by the Prime Minister, the Public Bill Office of the House of Commons being authorized to carry out the procedure by Mr. Speaker; Part 3, Letter to the Committee by the Under Secretary to the Treasury regarding the instructions given by the Prime Minister in 1934, Part 4, Figures indicating proportions of wide and narrow Financial Resolutions at various times, Comparison of Setting-up Resolution with eventual Committee Resolution, and the comparative numbers of Resolutions connected with Money Bills and with other Bills, put in by Mr (now Sir G. F. M.) Campion, then Clerk-Assistant and now Clerk of the House of Commons.

The Report¹ of the Committee now under consideration contains 16 paragraphs

The Committee states⁵ that of the principles embodied in S O 63 and 66 which they were instructed to maintain, the first (S O 63) and more important, "vests in the Crown the sole responsibility of incurring national expenditure (and) forbids an increase by the Commons of a sum demanded by

¹ 323 H C Deb 5 s 145, 146

² *Ib.*, 1063.

⁴ H.C. Paper 149 of 1937

² 326 *Ib.*, 743.

⁵ *Para.* 1.

or on behalf of the Crown for the service of the state," and, the second (S O. 64) is that a preliminary stage shall be taken on any proposal for expenditure before the House commits itself to that expenditure.

Paragraph 2 of the Report, in addition to dealing with the history of this financial procedure, recites the main features of the financial procedure of the House which are attributable to S O. 63 and 64, namely, (i) the King's Recommendation given to a Motion which it states is given once only to a measure for incurring expenditure and to a general and not a detailed proposal; (ii) the relation between Motion and Bill, and (iii) the limits of King's Recommendation binding on Ministers. The Committee here emphasizes the fact that once the King's Recommendation has been given, though a new Resolution may be brought forward, a Minister is as much bound by the terms of a Resolution as a private Member.

The main provision of Paragraph 3 is quoted at length:

3. By S O.'s 68 and 69 the House is empowered to adopt either of two forms of procedure on a motion for a charge on the public revenue. Under S O. 68 the Government may move, without notice, a motion that to-morrow or on some future day the House will resolve itself into a Committee "to consider of making provision" for certain expenditure. This "setting-up" resolution to which the King's Recommendation is attached has, in the past, been in wide terms, and these are the only terms which have bound the Committee on the Money Resolution itself. This latter Resolution may or may not be in more detailed terms than the "setting-up" resolution, but such limitations as it possesses when passed govern amendments at the Committee stage of the Bill. This procedure, though it has now fallen into disuse, was the normal one until 1922, when S O. 69 was adopted in its present form.

Standing Order 69 was designed, *inter alia*, to expedite the business of the House by enforcing the appearance on the Paper of Money Resolutions and thus enabling discussion to take place at once without the stage of the "setting-up" resolution. Procedure under this new Order, continued the Select Committee,¹ was not adopted until 1922 and its adoption coincided with a Ruling, by Sir Edwin Cornwall,² of great importance, to the effect that it was the terms of the "setting-up" resolution, to which the King's Recommendation had been given, which governed the deliberations of the Committee on the Money Resolution and not the terms of that Resolution itself. Following such Ruling, the Treasury, who in 1919 had with

¹ Para 4.

² See p. 104, *ante n.*

the approval of the Speaker taken over the drafting of Money Resolutions from the Public Bill Office of the House of Commons, were thenceforward in a better position to influence the scope of discussion and amendment in the House. It is the manner, continued the Report, in which certain Resolutions have been drafted (notably those in connection with the Unemployment Insurance Bill, 1933, the Depressed Areas (Development and Improvement) Bill, 1934, the Tithe Bill, 1936, and Special Areas (Amendment) Bill, 1937) which has led to the criticisms made in the House during the last few years. Paragraph 4 then refers to May¹ in regard to the scope of the Bills founded on Resolutions of the Committee of Ways and Means and those in which expenditure is a minor feature and are the subject of inquiry by the Select Committee; the clauses of which are italicized.

Paragraph 5 states that the substance of the complaints made is that, owing to the narrow and detailed drafting of Money Resolutions, not only is debate on the Resolution curtailed, but also that it is impossible to move other than restrictive amendments at the Committee stage of the Bill, and quote in support a remark made by Mr. Speaker in 1934² in reply to a Question, namely—

That it must be evident to all hon. Members that under the new procedure . . . Members are very much restricted in their powers to move Amendments either on a Resolution . . . or . . . on the Committee stage of the Bill. If I were asked for my opinion, I should say that not only has the limit been reached but that it has been rather exceeded by the amount of detail which is put in a Money Resolution.

As a result of this, verbal instructions were given by the then Prime Minister to the Treasury³ that Resolutions were to be "drafted as flexibly as is consistent with the fundamental principle of that underlying S.O. 63," but complaints continued until 1937 when the Leader of the Opposition moved his Motion already dealt with, and the Select Committee was set up.

Paragraph 6 refers to the initiation of expenditure being the sole right of the Crown and Paragraphs 7 and 8 will be quoted *verbatim*

7 The extent to which the House should permit itself to control and criticize the financial proposals of the Crown appears to your Committee to be the crux of the problem before them. The burden of the dissatisfaction which has been increasingly felt of late years, is that the Government have presented their

¹ 13th Ed., 506.

² 295 H.C. Deb. 5 s. 1236.

³ Appendix 3.

proposal with such minute detail regarding the purposes of expenditure that the House has been debarred not only from increasing the charge but from varying those proposals. Members who wish to amend a Money Resolution in detail are sometimes driven to opposing it as a whole. That the House may not increase the charge is part of the principle underlying Standing Order No. 63, and is not questioned, but your Committee are of opinion that the House should not be prevented, by the manner in which the Resolution is drawn, from varying the purposes of expenditure within the framework of the Crown's proposals, and thus making its criticism constructive. This freedom the House has enjoyed in the past, and any tendency to curtail it is to be deprecated.

8 It must be borne in mind that the difficulties with which the House is now faced of reconciling the separate functions of the Crown and the Commons in providing for expenditure have "come to a head owing to the greatly increased output of social legislation in recent years." In this connection your Committee cannot do better than quote from a memorandum submitted to them—"Bills of this nature inevitably require financial provision, and indeed the money is often the very kernel of the Bill. In the past the natural attitude of the House, representing the taxpayers, was expected to be a desire to cut down the expenditure they contained. But now there is a varying but considerable body of opinion which wishes to increase the financial provision proposed by the Government for social purposes." In the different conditions of to-day your Committee are of opinion that "a complete revision to the position existent before 1922" is neither possible nor desirable.

Paragraph 9 of the Report alludes to the terms in which the resolutions receive the King's Recommendation under S.O. 63.

Paragraph 10 states that if the financial provisions of a measure are not to the liking of the House, the stage at which Members can most effectively amend them is the Committee stage, and it is there that the Select Committee consider greater freedom should be aimed at. To secure this greater freedom, continued the Report of the Select Committee, it is clear that the terms of the Money Resolution (under S.O. 69) should be wider than the terms of the Bill, so that amendments can be moved in Committee up to the limits prescribed in the Resolution:

Your Committee have arrived at the general conclusion that some intermediate standard of drafting between the undue narrowness of some modern Resolutions and the extreme freedom existing before the War is desirable.

The Report then goes on to deal¹ with the question of the method by which its recommendations could be brought about,

¹ Paras 10, 11, 12

whether by a declaratory Resolution or by Standing Order, and refers to a Chairmen's Panel and the position of Mr. Speaker.

The Committee suggested¹ that in order to ensure that Members should have both Resolution and Bill before them together, either a draft of the Bill should be available when the Resolution first appeared or alternatively the procedure on Bills founded on a Resolution should be altered.

The Report then goes on² to refer to the Report of the Select Committee on Procedure in 1932³ and to the question of taking the Committee Resolution after Second Reading of the Bill as well as other suggestions in regard to drafting and "reasoned amendments."

The Recommendations are given in the last paragraph of the Report (16) in which the following declaratory Resolution is recommended:

That this House, while affirming the principle that proposals for expenditure should be initiated only by the Crown, is of opinion that Standing Order No. 63 is capable of being applied so as to restrict unduly the control which, within the limits prescribed by that principle, this House has been accustomed to exercise over legislation authorizing expenditure; and that any detailed provisions which define or limit the objects and conditions of expenditure contained in a Bill should, if and so far as they are set out in a Financial Resolution, be expressed in wider terms than in the Bill so as to permit amendments to the Bill, which have for their object the extension or relaxation of such provisions, and which do not materially increase the charge.

The Select Committee here observed that the enforcement of this declaratory Resolution involved a comparison between the Financial Resolution and the financial provisions of the Bill.

In sub-paragraph (11) *Money Bills*—the adoption of the recommendation of the Select Committee of 1932 was recommended, in that Financial Resolutions should be taken after the Second Reading of Bills of which the primary purpose is the expenditure of public money, thereby assimilating the practice in respect of Bills the financial provisions of which are a subsidiary feature thereof.

And finally, the Select Committee suggested a new Standing Order drafted in some such terms as the following, but to bring the matter up to date the amendments embodied in what has since become the new S O 68a are also shown, the word omitted in [square brackets] and those inserted underlined:

¹ *Ib.*, 13.

² *Ib.*, 14 and 15

³ H C Paper 129.

A Bill (other than a Bill which is required to originate [originates] in Committee of Ways and Means) the main object of which is the creation of a public charge may either be presented, or brought in upon an order of the House, by a Minister of the Crown and, in the case of a Bill so presented or brought in, the creation of the charge shall not require to be authorized by a Committee of the Whole House until the Bill has been read a second time, and after the charge has been so authorized the Bill shall be proceeded with in the same manner as a Bill which involves a charge that is subsidiary to its main purpose.

As the subject-matter of the Committee's inquiry is one which will closely interest every Clerk-at-the-Table in the Oversea Parliaments, it is proposed to quote certain extracts from the evidence, published with the Report, though not including evidence upon which the Select Committee based such Report, except in such cases where it is useful for other purposes. The witnesses were, almost all, persons with special technical qualifications in regard to the questions at issue. The first witness to be examined was Sir Horace Dawkins, K C B., M.B E., then Clerk of the House of Commons. His Memorandum put in, which recited the various precedents, will be found of particular interest to readers of this JOURNAL.

To the question¹—"Does the Public Bill Office act on the instructions of the Government in drawing up Resolutions, and so forth?"—the witness said—"The Public Bill Office is entirely independent of the Government. My department considers itself entirely independent of any Government."

In reply to the question²—"Do you regard yourself as a servant of the House of Commons or of the Government, Sir Horace?" the witness said—"Of the House of Commons"; and in reply to another question³—"I am inclined to say that my department cannot be instructed by a Government department. We are the servants of the House entirely."

In reply to another member of the Committee, who asked what was the function of the Public Bill Office and if they drew up ordinary Bills, the witness said⁴—"It does not draw them; it sees that they conform to the Orders of the House and the Rules of the House, and that they are covered by Resolutions which have been passed."

In regard to questions put as to the responsibility of Mr.

¹ Q. 50.

² Q. 59.

³ Q. 62.

⁴ Q. 65.

Speaker in regard to Resolutions, the witness said that the Speaker was "responsible for the privileges of the House, and if he considered that a Resolution is entirely unfit to appear and is tying the House too much, he can, as guardian of the privileges, refuse to permit it to appear on the Paper."

The witness was then asked:

97. Supposing the Government put down a Resolution which the Speaker thought was unduly curtailing the liberties of the House. Could he refuse it admission to the Order Paper?—I could not say he could technically refuse, but he could put such strong pressure upon the Government that no Government would dare produce it.

In reply to a question¹ as to the vesting of certain authorities in connection with financial procedure, in the Speaker's or the Chairman's Panel, another member of the Committee asked the witness—"Can you conceive that if you give these delicate functions to the Speaker and compel him to make decisions on matters which are going to be controversial in the House itself, you put him in a position which he might find almost impossible? I always feel myself that his position is far more delicate than we realize. You have only to get half a dozen important Members to put down a Motion condemning one of his Rulings in the House, and he has really to consider whether he will go on or not?"—in which the witness concurred.

The second witness was the Rt. Hon. Sir Dennis Herbert, K B E (Chairman of Ways and Means), who in his Memorandum said that it was beyond a doubt that Members had on various occasions had good reason to complain of the way in which Financial Resolutions had been drawn; the grievance usually was that the Resolution had been so lengthy, and had set out the Government proposals in such detail, that it was difficult or impossible to draft any amendments to the Bill (or to the money clauses of the Bill) which would not be out of order, either (1) because they would or might increase the Charge, or (2) because they were inconsistent with the King's Recommendation.²

Question 264 quoted S.O. 64 and the following question stated that it was the practice in some Bills, by common agreement, to take the Second Reading and put down the Financial Resolution before the Committee stage to the clause which involved a Charge. To which the witness replied—"Yes, because the Bill itself is not a Petition or Bill

¹ Q. 163.

² Q. 192.

for spending money It is a Bill for other purposes, and there are certain clauses in it which are merely subsidiary to it "

Q 266. Then there are three classes of Bills There is the Committee of Ways and Means Bill, which is like a Budget, there is the Special Allowances Bill, which is mainly to grant money, and the ordinary Bill, which incidentally, involves a charge?—Yes Of the Bills which have to be founded upon a Resolution, it may be on a Resolution of Ways and Means, or it may be on another class of Resolution, one in Committee of the Whole House, not Ways and Means

In reply to a question,¹ Captain the Rt. Hon R. C. Bourne (Deputy Chairman of Ways and Means) said—"Sir Edwin Cornwall's decision² was merely a repetition of that given by Mr Speaker Lowther, when Chairman of Ways and Means, I think in 1901, so why that should have come as a surprise is not quite clear. It is possible that the practice altered during the War, when things were not run very strictly; that the idea had grown up in the War that it was the Resolution and not the setting-up Resolution which governed the Bill, and the reversion to the older and more correct form came as a surprise because it had been forgotten.

The next witnesses were Sir Maurice Gwyer, K.C.B., K.C.S.I., K.C., Parliamentary Counsel to the Treasury, and Mr L. A. J. Granville Ram, C.B., who put in a Memorandum, from which certain extracts will be quoted.³

2. . . . It seems therefore desirable, before dealing with the operation of Standing Orders 68 and 69, to explain that these restrictions are the direct—and in some degree the inevitable—result of the maintenance of the principle embodied in Standing Order 63, and that for a Committee of the House to alter the Government's proposals as to the destination of money or as to the conditions upon which it is to become payable would be, in the vast majority of cases, as much a violation of that principle as a direct increase in the amount proposed

3. This may be illustrated by examining the suggestion sometimes made that the Crown's control over new expenditure could be sufficiently exercised if Financial Resolutions were so drafted as merely to state in general terms the purposes for which money is required and to limit the amount of the proposed expenditure to a specified sum, so that the detailed application of the money would be left open for subsequent decision by the Committee on the Bill. The first thing to be said about this suggestion is that it is never possible to specify a maximum limit of expenditure in a Resolution unless it is also possible to insert the same limit in the Bill itself A Financial Resolution must cover the whole

¹ Q 354.

² See p 104, *ante n*

³ P 45.

charge to be imposed by the Bill to which it relates, and therefore it must be plain upon the face of the two documents that the Bill does not go beyond what the Financial Resolution authorizes

* * * * *

5. . . it is not only permissible but essential that Financial Resolutions should define with *some* precision both the objects and the conditions of the expenditure for which authorization is sought

* * * * *

14 . . Up to the date of that Ruling¹ it had been generally assumed that it was not the preliminary Resolution to set up the Committee but the subsequent Resolution brought before the Committee when set up which governed the deliberations of the Committee, it was therefore only the latter Resolution which was carefully drafted. After it had been ruled that the "setting-up" Resolution was the important one it would have been easy merely to have devoted to it the same care in drafting as had hitherto been given to the subsequent Resolution, but when the whole matter was thus brought under consideration the advantages of the new procedure laid down by what was then Standing Order No 71A (now Standing Order 69) came to be appreciated simply from the point of view of saving an extra preliminary stage, and it was for this reason only that the procedure under the new Standing Orders came to be adopted instead of the old procedure

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15 . . there is no substance in the allegation that tightly drawn Financial Resolutions can prevent *discussion*.

* * * * *

19 . . . Modern legislation, and especially social legislation, tends with the complexity of modern civilization to become more and more elaborate, and to be bound up more and more with questions of finance . . . The principle of Standing Orders relating to finance can, we submit, only be preserved by rigidly maintaining the line which divides the functions of the Executive from those of the Legislature in that respect

In reply to a question² following one in regard to blanks in Bills, Sir Maurice Gwyer said:

I should like to make it clear that the considerations governing the question what is a Money Bill for the purposes of the Parliament Act are not the same as those governing the question what is a Money Bill for the purposes of determining whether it is to be founded upon a Resolution. There have been many instances where Bills have been founded on a Resolution, but have been held not to be Money Bills within the meaning of the Parliament Act, which is a highly technical, closely drawn Section. The two things are not parallel necessarily, at all.

¹ See p. 104, *ante n*

² Q. 395.

In reply to a question¹ that if an amendment was on some matter which did not affect the expenditure of money it would not be out of order merely technically because it changed some terms in a strictly drawn Financial Resolution, Mr. Granville Ram answered—"No; such amendments are constantly moved."

The eighth witness was Sir Bryan Fell, K C M G, C B (late Principal Clerk of the Public Bill Office of the House of Commons), who also put in a Memorandum upon which he was questioned. Before quoting from his evidence, however, attention will be drawn to certain parts of such Memorandum Dealing with the principle of the initiation of expenditure being vested in the Executive, the witness said:²

... for over 200 years the Executive were content to use quite general terms in initiating their proposals for expenditure, leaving the House of Commons free to amend the details of those proposals, provided that such amendments kept within the general terms of the proposals recommended and did not increase the total sum asked for, if a specified sum had been named for the cost or as the upper limit of the cost. But within the last 15 years a change has occurred in the attitude of the Executive Governments are no longer content to initiate their proposals in general terms, leaving the details to be filled in by the Bill, but instead, draft these proposals in extreme detail and taking advantage of S.O. No. 69, which was intended for use in emergencies, to accelerate financial procedure, they have applied the Recommendation of the Crown to their detailed propositions

The appointment of this Committee is the outcome of the dissatisfaction caused by this change.

* * * * *

Control over expenditure has always been a function of the House and, as an old servant of the House, I view with suspicion any encroachment of the Executive upon the rights of the House. Moreover, I feel that, if no action is taken as the result of this inquiry, and the Executive are allowed to establish their right to put detailed proposals before the House and to use the procedure of the House to prevent any amendment being moved to these proposals, the temptation to push the doctrine further will be irresistible, until, at length, the House will be debarred from making any amendment to the Executive's proposals and be allowed only to accept or reject them as they stand.

During the course of his reply to a question,³ the witness said—"Under the present practice you get two Second Readings: you get a Second Reading on the Financial Resolution and you get a Second Reading on the Bill "

In regard to the terms of a Financial Resolution upon which the consequent Bill is founded, which Resolution and the

¹ Q. 480.

² P. 89.

³ Q. 768.

long title of the Bill have to cover everything inside the Bill, the witness quoted a certain Bill the long title of which occupied about one-third of a column of the Commons Journals, but the Resolution upon which the Bill was founded occupied two and one-third columns. In other words, said the witness, "the Resolution was about seven times as long as the Bill."¹

The ninth witness was Mr. W. R. Gibbons (Principal Clerk of the Public Bill Office), the following paragraphs of whose Memorandum² are of particular interest:

Until December, 1919, both the setting-up and the Money Resolution itself were drafted by the Public Bill Office. December, 1919, till May, 1922, the setting-up Resolution was drafted by the Public Bill Office, and the Money Resolution by Parliamentary Counsel

* * * * *

The setting-up Resolution was moved formally without notice at the beginning or end of business. The Money Resolution appeared the next day on the notice paper, if it was thought necessary, but except in the cases of important Bills (*e.g.*, Government of Ireland Bill, 1912) Money Resolutions were not usually put on the Paper till May, 1919, when it became the regular practice. When the financial proposals of a Bill were complicated the Public Bill Office consulted Parliamentary Counsel about the wording of Money Resolutions, but there was no Treasury control over the wording.

Bills introduced on Money Resolutions

In these cases the Money Resolution was drafted to cover all the main provisions in the draft Bill sent to the Public Bill Office.

Bills with subsequent Resolutions

In these cases the Resolutions were based on the words in the Bill which the Public Bill Office had italicized as imposing a charge.

Occasionally the Minister in charge of the Bill notified the Public Bill Office that he wanted the Money Resolution drawn wide enough to cover amendments to the Bill that he wished to move or accept.

In December, 1919, Mr. Speaker authorized the change in practice whereby Money Resolutions were drafted by Parliamentary Counsel and put on the notice paper in the name of the Financial Secretary to the Treasury, after the Public Bill Office had received notice in writing of the Financial Secretary's authority for this. Hitherto Money Resolutions had been put down generally in the name of the Minister in charge of the Bill.

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. . . It may be noted that the procedure took no longer under S.O. 68 than under S.O. 69, since the setting-up was done without notice.

* * * * *

¹ Q 815.

² Pp. 102, 103

. It will be seen . that in reference to the Committee stage of a Bill it makes no difference whether the procedure of S O 68 or 69 has been adopted for the Money Resolution. The Committee on the Bill is bound by the Money Resolution in both cases . Under S O 68 any amendments are permissible which are within the setting-up Resolution. This does not seem to have been realized before 1922, and is probably the reason why the setting-up Resolution was drawn in very general words. Under S O 69 the only amendments which can be moved are those which do not increase the charge or alter the objects set out in the Money Resolution.

* * * * *

. The earlier (Money) Resolutions were drafted to cover only the words in a Bill which imposed a charge and which the Committee on a Bill could not consider without a Money Resolution. Whereas some recent Resolutions have often covered in addition provisions of a Bill which do not in themselves impose a charge and which the Committee on the Bill could consider without a Money Resolution.

In answer to another question,¹ the witness said—"Under S O 68 the setting-up Resolution has had the King's Recommendation, so in the Money Committee any amendments to the Money Resolution itself can be moved which are within the setting-up Resolution. If you proceed under Standing Order 69, there is no setting-up Resolution. The Money Resolution itself has had the King's Recommendation and any amendment increasing the charge in that is out of order. The following questions were then put to the witness.

Q 974 Of course, S O.'s 68 and 69 are really alternative procedures, are they not?—Yes, exactly.

Q 975. And it is now the custom of the Government, apparently, to proceed under S O 69?—Yes.

Q 976 I suppose if they proceeded under S O 68 they could similarly restrict discussion by drawing up the setting-up Resolution in a restricted form?—Yes.

In answer to a further question,² the witness said—"The setting-up Resolution certainly was drawn in wider terms than the Money Resolution itself. It sometimes had a money limit put in, even in the setting-up Resolution."

The following question was put to the witness:

Q 1002 If it is mainly a Money Bill, then there must be that preliminary Money Resolution?—Yes. We get a good many difficult cases really. That is what Erskine May says that the main object of the Bill is to grant money, it is a Money Bill. In practice, we rather apply this test. If you take away the clauses which will not work without money, what have you left? If it is anything substantial, it is not a Money Bill.

¹ Q 970.

² Q 978

The next and tenth witness was Sir Frederick Phillips, K.C.M.G., C.B. (Under-Secretary of the Treasury), and in paragraph 3¹ of the Memorandum he put in it was stated that

The sole concern of the Treasury is to see that Financial Resolutions define with sufficient clarity the financial proposals of the Government in order to enable the rule of the House embodied in S.O. 63 to be carried out in the spirit as well as the letter

Paragraph 10² of this Memorandum shows the advantage of the new procedure over the old, as follows:

A. S.O. 64 and 68. THE OLD PROCEDURE

First Stage

The "setting-up" Resolution. Motion made without notice that the House would on a future day resolve itself into a Committee to consider certain expenditure. This preliminary stage was purely formal and the Motion was made without notice either immediately after Questions or at the end of public business. The King's Recommendation was signified at this point.

Second Stage

On the day appointed the House went into Committee to consider the object in view and passed the main Resolution, of which it was unnecessary and by no means the general practice to give previous notice on the Order Paper.

Third Stage

The Resolution reported.

B. S.O. 69 (late 71A) THE ALTERNATIVE PROCEDURE.

First Stage

The House goes into Committee to consider a Financial Resolution, of which previous notice must be given.

Note—The alternative procedure under S.O. 69 can only apply in cases where notice of the Resolution appears on the Order Paper.

The King's recommendation is signified at this stage.

As to whether the present method of drawing detailed Money Resolutions is necessary or desirable, it is stated in paragraph 12 (1) of the Memorandum.

Yes, provided that care continues to be taken that no more restriction is contained in the Resolution than is necessary to carry out the principle behind S.O. 63.

At the conclusion of the Memorandum the view was expressed that a return to the practice of loosely drafted resolutions would be advisable.

In reply to a question¹ as to whether the Private Bill Office or the Treasury should draft the Resolutions, the witness said that the Resolutions were Government property and presumably it would always rest with it to decide whom it should ask to draft the particular amendments. The Treasury had no independent existence in the matter. They were simply carrying out such instructions as Ministers gave from time to time.

The witness was asked,² in the event of a Bill being drafted by a Government Department containing any suggestion of money, would it be sent to the Parliamentary Counsel at the Treasury, to which the reply was—"That is so, yes. I imagine the Departmental Solicitor might draw up general heads of a Bill, but it would come, before the actual final drafting, to the Parliamentary Counsel."

Q 1081 So that Bills, whether mainly financial or not, all have to be subject to the inspection of Parliamentary Counsel?—That is so.

In reply to another question³ the witness expressed the view that if the old procedure was reverted to they would have the old difficulties which produced the change in 1919.

When asked to interpret the spirit of S.O. 63, the witness replied.⁴

Well, Sir, the spirit of S O 63 I take to be this that the Government is charged with an onerous responsibility of putting forward all proposals for taxation, it is likewise charged with the responsibility of putting forward all proposals for expenditure, estimates and supply, and it seems to follow that it should have a like responsibility in respect of proposals for expenditure contained in Bills which may be much more important and have more lasting effects than any Supply Estimates. It seems to follow, therefore, that the responsibility for making financial proposals in connection with Bills should rest with the Government, and that amendments ought not to be accepted which increase the charge. I agree that thereafter you come to a kind of border-line where the question of how far you can amend the provisions arises.

In reply to a question,⁵ why the House was more restricted in discussion under S.O. 69 than under 68, the witness said:

In the case of S O 68, which was the old procedure, you will remember there was a Resolution put down by the Public Bill Office in quite vague terms "Committee to meet to consider of such and such business," and to that recommendation was

¹ Q. 1072.

² Q. 1080.

³ Q. 1084.

⁴ Q. 1103.

⁵ Q. 1140.

attached the King's Recommendation, and the ruling of 1922 was that it was that setting-up Resolution which governed the debates in the Committee on the Resolution, and that therefore amendments could be moved freely to the subsequent later Resolution put up by the Government; but now, under S O 69, you have this position, that the first thing that happens is that the Government Resolution is put down on the paper; it is that which receives the King's Recommendation and the Committee, as I understand, is set up to consider that Government Recommendation.

During the course of the second attendance of the Deputy Chairman of Ways and Means, who could not remain longer when previously giving evidence on account of having to take the Chair for Mr. Speaker at 5 o'clock, in reply to a question¹ he said—" . . . The Chair has expressed an opinion, but that is not giving a ruling."

In reply to the question² as to whether everything in the Estimates had at some time or other to be sanctioned by legislation in Parliament, the witness said—" . . . a good deal of the Estimates is not. There have been cases of the Appropriation Act being the first authority, and legislation coming afterwards "

The twelfth witness was Sir William Graham-Harrison, K.C.B., K.C. (late Parliamentary Counsel to the Treasury), who, in regard to the drafting of Financial Resolutions, and their alteration in detail when before Parliament, and the question of having a maximum sufficient for the purposes the Government had in mind, was asked:

Q 1345 . . . Could you tell me what would happen supposing a piece of legislation is passed that a benefit is to be given under certain conditions, that a person is entitled to a benefit or to a pension on certain conditions. Then suppose those conditions are not specified in the Financial Resolution, although the Government have got certain conditions in mind on which they then estimate the expenditure. Now suppose a lot of conditions are added to that and you have still got a maximum, is not anyone entitled, who comes within that condition, to the benefit due to him for it, and might not the maximum be exceeded? And then what happens?—I should think, probably, what ordinarily happens is that he might not be entitled to it in law, but let us assume for a moment he is

Q 1346 He might have a petition of right?—I am not certain, because the thing depends sometimes on discretion. But what would happen would be this, that under the ordinary practice in those cases, as I understand, the Department concerned would provide the necessary amount of money and could get it put right in the next Appropriation Bill, but having done it, it would have to come and get fresh legislation

¹ Q. 1269

² Q. 1309.

Q 1347 So, in fact, the maximum would be exceeded The maximum is a pure farce in those circumstances?—No, I do not think that is true. It is not a farce, because according to the rule, which I understand is the established rule of the House, you can only do that once, you cannot do it a second time

Q 1348 I do not quite follow?—You may do it one year and get it covered by the Appropriation Act, but you cannot do it a second year and get it covered by the Appropriation Act You must get the amendment by specific legislation.

The witness was also asked¹ how it was that under S O 69 Financial Resolutions were now drawn tightly, to which the reply was—"They are now drawn under the direction of the Treasury and the Treasury have the control. They see all these Resolutions, and they have to be approved by the Treasury before they can be put on the Paper, and they are drawn in terms which will, in the opinion of the Treasury, precisely limit the expenditure to the heads under which the Treasury wish money to be spent, and in respect of the matters upon which they wish money to be spent." In answer to another question² the witness said—"I am quite certain that no Government would contemplate surrendering its power of having the whip hand in financial matters."

In reply to a question³ as to the interpretation of S O. 63, the witness said

As I understand it there are two possible interpretations One, that S O 63 insists upon the Crown, that is the Government, initiating expenditure in general terms There is another possible explanation, that S.O 63 necessitates the Crown authorizing expenditure in detail, item by item, and that no expenditure exceeding or altering those items can possibly comply with S O 63.

The last witness was Mr G. F M Campion, C B., Clerk-Assistant⁴ of the House of Commons, who stated in paragraph 1 of his Memorandum that the terms of the Financial Resolutions should be wider than those of the Bill Otherwise no amendment to extend the terms of the Bill would be possible In regard to the control by the House of the form of Budget Resolutions, the witness stated that if it was accepted that in practice the House exercised some control over the form of the Estimates and Budget Resolutions,⁵ there seemed no reason why it should not exercise some control also over the remaining method by which the Crown submits its financial demands, namely,

¹ Q. 1385

² Q 1400

³ Q 1407

⁴ Now Sir Gilbert Campion, K.C B., Clerk of the House of Commons

⁵ May, 13th Ed, 543

Financial Resolutions The concluding words of this most interesting and instructive Memorandum are

It is not the frequency with which such Resolutions are presented that has given rise to complaint in the House of Commons, but rather the fact that, in the cases in which Resolutions have been complained of, the matters they dealt with were important and controversial

In reply to Question 1428, the witness said

the King's Recommendation combines two things it combines, perhaps, a maximum sum of money, the Charge, and also the purposes An amendment is equally out of order if it increases the amount of money, or if it introduces a new purpose, but there are always both considerations present in every Financial Resolution

Certain questions and their replies by this witness will now be quoted verbatim

Q 1433 There is only one other question I know you are an authority on the constitutional and historical aspects of it Could you tell us very briefly what the purpose of S O 64 was ? What is the purpose of making these things originate in Committee ? What is the big purpose to be achieved ?—I think it undoubtedly was to give an opportunity of considering, before the House was committed to anything, to introduce a stage which was non-committal before the House committed itself to expenditure I believe that is a very old principle, older than the Standing Order, it was in existence in the early seventeenth century

Q 1434 So S O 64 was merely declaratory of the then constitutional practice ?—Yes I think S.O 63 was also

* * * * *

Q 1445 So that a Resolution of the House touching the conduct of business is binding upon the Speaker, although a Resolution of the House touching legislation is not binding upon the Government ?—Certainly, a Resolution by the House does not make legislation

Referring to the King's Recommendation of Money Resolutions the witness said—"All we mean by recommendation is the signification of the recommendation by a Minister."

In reply to the following questions the witness said:

Q 1471. A new service may appear in a Supply Vote ?—That requires some authority; either statutory authority or some other authority

Q 1472 Are you sure that is right, Mr. Campion? Is it not a fact that the Estimate, when passed and become the Consolidated Fund Bill, or whatever it does become, is as much legislation as any other legislation, and requires no support from any other statute?—No, I think not. I think the Public Accounts Committee invariably insist upon some authority.

Q 1473 Outside the Estimate?—Outside the Appropriation Act. After all, the Appropriation Act only gives authority for one year.

The following question will also be of interest to some Oversea Parliaments.

Q 1477 To take the question of the payment of Members in 1911, which was a totally new thing. Is it not the fact that that was just introduced in an Estimate?—That was so. I think everybody has been very doubtful as to whether that did not really require legislative authority.

* * * * *

Q 1567 I have in mind the fact that it was apparently open for the House to discuss matters in, at any rate, much greater detail, and to propose additional expenditure prior to 1920 or thereabouts?—Yes. Of course, the remarkable thing is how seldom that was made use of. Those very loosely drawn Resolutions, and also the setting-up Resolutions continued for a very long time without any Member availing himself of the opportunity.

* * * * *

Q 1603. Is not the Paper full every day of propositions that are out of order?—Yes, but not put down by the Government.

In reply to a question,¹ the witness said—“I think undoubtedly Financial Resolutions have grown stricter. I think perhaps the case of a Resolution which was most tightly drawn was the first Special Areas one of 1934,² which contained a schedule.

Q. 1649. Of course a good many of the Budgets are not Money Bills at all?—Many have been refused a certificate.³

Q 1650. There was in fact a doubt over the first Budget?—I am not quite sure. I do not remember, but I think very few Finance Bills in the last 20 years have received the Speaker's certificate.

At the close of Mr. Campion's evidence, he said⁴ that his whole object was to try to maintain the principle that the initiative belonged to the Crown alone, and to give that a reasonable interpretation, neither an extremely rigid interpretation nor yet too lax an interpretation. That was, of course, the

¹ Q 1613

² *Vide* Parliament Act, 1911.

³ 295 H.C. Deb. 5 s. 1377 to 1390.

⁴ Q. 1669.

principle, and the whole problem was to find the right balance between the claims of the Government and the rights of private Members, but in the case of finance, he thought the Government ought to be in a stronger position than they were in other matters in view of the principle that the initiative belonged to them¹

The following is the Memorandum Captain the Rt. Hon. E. A. FitzRoy, the Speaker of the House of Commons, put in possession of the Select Committee.

It has been suggested that some form of declaratory Resolution should be passed by the House, defining to some extent the terms of Financial Resolutions, so as to give wider powers of amendment to the Committee stage of the Bill which is subsequently to be introduced.

That is a matter entirely for the House to decide for itself. If that were the procedure adopted, it would necessarily follow that some authority would have to be responsible as to whether the Financial Resolution conformed to the standard laid down by the Resolution of the House.

The only obvious authority for the purpose would be the Speaker. His decision would be final and could be given without delay.

It is upon that suggestion that a few remarks are offered.

The Speaker is the servant of the House, and as such is always willing to undertake duties put upon him by the House. When it is suggested that a new and difficult task is to be added to the existing burdens of the Speaker it is as well, before doing so, fully to consider the effect that the exercise of these duties might have upon his status in the House, and his relations to its Members.

How wide Governments should frame their Money Resolutions so as to give scope for amendments to the Bills which are to be founded upon them is a question which may give rise to extreme controversy between different parties in the House.

A Speaker's authority and status rest upon his absolute impartiality and the confidence which Members repose in him. This is the very foundation stone upon which the constitution and procedure of the British House of Commons is built. Any weakening or break in it would bring the whole structure to the ground.

The initiative in expenditure is reserved to the Crown under S O 63. The responsibility for drafting a Money Resolution upon which a Bill is to be founded rests, therefore, with the Executive and the King's Recommendation signified by a member of the Cabinet. It is true that the Speaker is the guardian of the privileges, rights and liberties of the House against the power of the Executive, and he has from time to time expressed opinions in the case of Money Resolutions.

Would it be wise definitely to place upon the Speaker a task

¹ Q. 1672

which may call upon him to give a decision on a matter which may be highly controversial, and which might bring upon him the accusation of having favoured one side or the other in the controversy?

No doubt in practice few Financial Resolutions would need to be referred to the Speaker on the ground that they were in too detailed terms. In these matters it is essential to look ahead, and the time might come, especially if it is to become the practice to oppose the Speaker in his constituency at Election times, that such a ruling might be referred to at the time of an Election.

Questions.

On July 28,¹ a question was asked if the Report of the Select Committee had been considered and whether the Government accepted the Committee's recommendations, to which the Prime Minister replied that the matter was being considered.

On October 21,² in reply to a similar but supplementary question the Prime Minister said that the Minutes of Evidence of the Select Committee contained Mr Speaker's Memorandum, and addressing Mr Speaker, said:

In view of your expression of opinion, the Government consider that you, Sir, should be consulted on the whole question, and that is now being done,

adding that he (the Prime Minister) regretted therefore not to be in a position to make a statement that day, but hoped to be able to do so early in the new Session.

On November 9,³ the Prime Minister was asked by an hon. Member (the Rt. Hon. G. Lambert, South Molton), and a Member of, and for several meetings Chairman of, the Select Committee on Money Resolutions of 1937, what action the Government proposed to take with regard to the Report of that Committee, to which the Prime Minister (Rt. Hon. Neville Chamberlain) in his reply stated that the Government had very carefully considered the recommendations of the Select Committee, and while not accepting all the criticisms directed against the present practice as well founded, it had approached the question with every desire to remedy, so far as it might be consistent with its responsibilities, any features in the present position which appeared to hon. Members as unsatisfactory. The Government were prepared to accept in substance the second of the two main recommendations of the Select Committee—namely, the alteration of Standing Orders, so as to

¹ 326 H.C. Deb 5 s 3081-3082

² 328 *Ib.*, 1593-1600

³ 327 *Ib.*, 22, 27.

allow the Second Readings of Money Bills (other than those originating in Committee of Ways and Means) to be taken before consideration of the relevant Financial Resolutions in Committee; as enabling hon. Members to express their views on the detailed provisions of the Bill at an early stage; and as meeting the criticism that the House should not be required to examine and discuss the terms of the financial provisions as set out in the Financial Resolution before being fully informed of the Government's intentions as detailed in the clauses of the Bill. The Government noted that the new procedure was permissive and not mandatory and, as was the case with the similar recommendation of the Select Committee of 1932,¹ the right of the Government to proceed by preliminary Resolution was left unimpaired.

In regard to the recommendation of the Select Committee in respect of Declaratory Resolutions, however, the Government did not feel that the directions contained in such recommendation were compatible with S O 63, and that there were certain practical difficulties such as placing upon Mr Speaker the duty of giving decisions on highly controversial matters. The Government, however, was in sympathy with the desire of hon. Members to be in a position to offer constructive criticism of financial measures, and that Financial Resolutions in respect of Bills would be so framed as not to restrict Committees in amending Bills further than was necessary to enable the Government to discharge its responsibilities in regard to public expenditure and leave freedom for discussion and amendment of details compatible with the discharge of those responsibilities.

Written instructions, continued Mr Chamberlain, were being given to Government departments and the Parliamentary Counsel's Office drawing attention to the Committee's Report and to the statement he was then making, and requiring that in future such Financial Resolutions would be drawn so as not to involve undue restrictions, whereupon he quoted in full the actual letter conveying such instructions as follows:

Financial Resolutions.

SIR,

I am directed by the Lords Commissioners of His Majesty's Treasury to invite your attention to the Report of the Select Committee on Procedure relating to Money Resolutions (H C. 149 of 1937) and to the reply given by the Prime Minister to a Question in the House of Commons on the 9th November, 1937,

¹ H.C. Paper 129 of 1932.

and in particular to the declaration that it is the definite intention of His Majesty's Government to secure that Financial Resolutions in respect of Bills shall be so framed as not to restrict the scope within which the Committee on the Bills may consider amendments further than is necessary to enable the Government to discharge their responsibilities in regard to public expenditure, and to leave to the Committee the utmost freedom for discussion and amendment of details which is compatible with the discharge of those responsibilities

I am further to request that the necessary steps be taken to acquaint all those concerned with the requirement that the terms of any Financial Resolution, in the drafting of which they are concerned, shall not be so drawn as to involve undue restrictions and that the Government's declaration shall be complied with in all cases.

I am, etc.

The Prime Minister concluded by expressing his thanks to the hon Member for South Molton and to the other members of the Select Committee for their valuable Report.

Mr. Speaker's Opinion.

After a couple of Supplementary Questions, the Leader of the Opposition (Rt Hon. C. R Attlee) asked Mr Speaker whether, in view of this being a matter relating to the procedure of the House, he would care to express an opinion on these suggestions, whereupon Mr Speaker read a written statement consisting of five paragraphs of which the following is a précis:¹

The real questions at issue—namely, the amount of latitude properly to be allowed to private Members in proposing amendments which involve expenditure, and how Financial Resolutions should be drawn so as not to restrict unduly the scope of such amendments are questions of degree which admitted of an almost infinite variety of opinion as to where the line should be drawn and for which it was almost impossible to lay down rules of general application in advance of particular cases. Every case would have to be judged upon its merits, but a right judgment would not be possible without some guiding principle

* * * * *

Mr Speaker said that he found himself in considerable agreement with the Select Committee, but he did not agree that the conformity of Money Resolutions to the standard laid down by the Report should be subjected to his decision, his objections to which were laid down in his Memorandum¹ to the Committee, and that while always willing to undertake duties put upon him by the House, he questioned the wisdom of imposing upon the Speaker a duty which in his opinion would have the effect of involving him in party controversy.

* * * * *

¹ 328 H C. Deb. 5 s. 1596.

Mr. Speaker remarked that the mere issuing of the Government instruction (already referred to) was a considerable advance and more favourable to the House than the situation that previously existed. He noted that under the Government's proposals the direct responsibility would now not be laid upon him, which was the sole real difference between the Government and the Committee.

* * * * *

Mr. Speaker expressed himself in agreement with the statement in the Committee's Report, in which the Committee described its own intentions that the "declaratory Resolution" it recommended, so far from proposing any "innovation in practice," aimed at no more than maintaining

"what had long been (and still is except in rare instances) the established parliamentary practice in the authorization of expenditure"¹

This was borne out, continued Mr. Speaker, by the terms of the declaratory Resolution (already quoted), which he took to mean that the details of expenditure should be expressed more widely in a Financial Resolution than in a Bill in order to make it possible to amend such details. Comparing with this the standard laid down in the Government's instruction, Financial Resolutions should

"be so framed as not to restrict the scope within which the Committee on a Bill may consider amendments further than is necessary to enable the Government to discharge their responsibilities in regard to public expenditure, and to leave to the Committee the utmost freedom for discussion and amendment of detail which is compatible with the discharge of these responsibilities"²

This seemed to him, observed Mr. Speaker, to mean that Financial Resolutions should be so drawn as to enable the details of expenditure to be amended in Bills, and he reminded the House that they could not be so amended unless they were expressed more widely (or with less "particularity") in the Financial Resolution than in the Bill. Nor, continued Mr. Speaker, was this the only similarity, for both the declaratory Resolution and the instructions laid down an upper limit for such amendments of detail. According to the former, such amendments "must not materially increase the charge." According to the latter they must be "compatible with the discharge by the Government of their financial responsibilities."

In conclusion, Mr. Speaker said that it was not for him to express an opinion as to the efficacy of the machinery by which under the Government's plan the standard for Financial Resolutions would be enforced, especially as he was doubtful, for the reasons which he had stated, of the suitability of the only other possible machinery which had been suggested, namely, its enforcement by the Speaker. He thought, however, it would be a mistake

¹ Report, § II.

² S. C. Report, para. 16 (i).

for any section of the House to belittle the extent of the advance which the Government had made in their desire to meet the wishes of Members. The instructions which the Government had undertaken to issue for the drafting of Financial Resolutions would be on record, and every future case could be judged with reference to the standard therein laid down.

After a further Supplementary Question asked of the Prime Minister, the Leader of the Opposition then echoed what Mr. Chamberlain had said in his appreciation of the debt the House owed to the Select Committee.

The New Standing Order.

On February 1, 1938,¹ the Prime Minister moved the Motion² which has since become S O 68A, of the House of Commons.

Mr. Chamberlain in his opening speech took very much the line already dealt with in his reply to the question asked of him on November 9, and said the Government had followed very closely the draft Standing Order recommended by the Select Committee, which the Government had amended in two respects designed to make more clear the intention of the Motion.³ The Prime Minister then referred to three other points—namely, that the clauses in these Bills would still be printed in italics so that Members might have them first brought to their notice on Second Reading, except in cases where it would be necessary so to print nearly all the clauses, when it might be desirable to adopt some other method of distinguishing them. He took it that the Clerks-at-the-Table would see that whatever was done would be in a manner most convenient for the House.

In concluding the Prime Minister said that although under the new Standing Order the Financial Resolution would follow the Second Reading, the right of the Government to retain the present procedure in any particular instance remained unimpaired. The Order was permissive, not mandatory. Special reasons under special circumstances might require that the Financial Resolution be taken first, also that under the new procedure more than one stage would be possible in the one day; but that did not mean that the House could proceed in Committee any further than such clauses as did not entail the passing of the Financial Resolution to vitalize them.

¹ 331 H.C. Deb 5 s 67 to 70

² Already quoted, pp 115, 116, *ante* [Ed.]

³ These amendments have already been shown in square brackets and underlined in dealing with the Select Committee's Report

The hon. Member for Keighley (Rt Hon H B Lees-Smith) said¹ that for some years there had been a general idea expressed in these words, "Here is a difficulty, leave it to the Speaker to decide" More and more decisions of this sort had been put into his hands, such as the acceptance of the Closure, the acceptance of dilatory Motions for adjournment and the certification of Money Bills under the Parliament Act Mr. Speaker's Memorandum to the Select Committee was therefore a public document of great importance The hon Member doubted if the House fully realized how delicate the position of the Speaker was becoming. Mr Speaker depended upon the goodwill of the House and certainly upon the goodwill of the Opposition, because undoubtedly if there were a strong feeling against the Speaker in any section of the House, his position would become almost impossible

The hon Member for Dundee (Mr Dingle Foot) observed² that the new procedure would enable the Government in passing a Money Resolution to take into account the views expressed in the House on Second Reading, as well as avoid a duplication of debate. Under the present procedure it not infrequently happened that a discussion on a Money Resolution tended to become a kind of dress rehearsal to the Second Reading debate.

He did not want it to be supposed, however, continued the hon Member, that they were entirely satisfied with this alteration in the Rules of Procedure or that they regarded it as sufficient in itself to meet the grievances which had been so often expressed in the House The hon Member maintained that the House had not been fairly treated by the departments and that S O 69 had been used in such a way as to deprive Members of legitimate opportunities of moving amendments to Government Bills

The hon Member for South Molton (Rt. Hon G Lambert) said³ he was glad to see inscribed in the Report from the Select Committee the principle of the sole right of the Crown to initiate expenditure, a principle which has been described as "one of the sheet anchors of good government"⁴ The hon. Member maintained that it would be impossible to allow Members to run riot with expenditure and to propose public expenditure That was as much in the interests of the party opposite as it was in the interests of any Government.

¹ 331 H C Deb 5. s. 71 to 73

² *Ib.*, 74

³ *Ib.*, 77, 78

⁴ *The System of National Finance*, by Hilton Young, 2nd ed., p. 48.

The hon. Member for Glasgow, Camlachie (Mr. C. Stephen), said¹ that the position he took up in the Select Committee was that the House should return to the procedure which obtained before the original passing of S.O. 69 in 1919 and its amendments in 1922. He would like to see every Member have the opportunity of bringing forward any proposals for expenditure which he thought necessary.

The hon. Member for Bolton (Sir Cyril Entwistle, K.C.M.G.) said² that one of the difficulties which the Select Committee had to face was the devising of a Declaratory Resolution which would maintain inviolate the principle embodied in S.O. 63. In his opinion such a Resolution would have meant that there would have been some control over the initiating of expenditure. Any amendment that increased the charge would be out of order because it violated S.O. 63 unless such amendment was within the terms of the Financial Resolution authorizing the charge.

The hon. Member for Ebbw Vale (Mr. A. Bevan) observed³ that the reason why in the past private Members never wished to increase expenditure was that it was the King who wanted the money, and they always wanted to give him less than he asked. So it was not very remarkable that in the past the House of Commons was not anxious to initiate expense and was always putting a restraint upon the demands of the Crown. When the Executive became dependent upon the votes of the Commons and not upon the devotees of the King, the Commons had to take steps to prevent the King's men from initiating expenditure on behalf of the King. The restriction upon the initiation of expenditure was imposed because the King had been trying in that way to get round the position. He would make a demand upon his Ministers, his Ministers would refuse it, and then he would use the King's party in the House to impose an increase of expenditure upon the Executive.

The limitation was imposed in the first place to protect the House of Commons against the Crown. It was now used to protect the Executive against the Commons.

The hon. Member for Leeds, S.E. (Major J. Milner, M.C., LL.B.), remarked⁴ that he was a little concerned about what the Prime Minister said on November 9, and also that day in apparently emphasizing the point that the operation of the Motion will be primarily permissive, as though he expected there would be occasions upon which advantage would not be taken of it.

¹ 331 H.C. Deb. 5 s. 81.

² *Ib.*, 94, 95.

³ *Ib.*, 90, 91.

⁴ *Ib.*, 99, 100.

and of the wishes of the House. In now passing the Motion he could not conceive of the circumstances which would lead the Government to have a Financial Resolution first and a Second Reading second, unless for some special reason the Government desired to restrict the opportunities of amendment afforded to the House. If that were proposed, he was sure the attention of the House would be called to it and a very serious view taken.

Italicization.

On February 15, 1938,¹ the hon Member for Buteshire and N. Ayrshire (Colonel Sir Charles MacAndrew) raised the point of Order, that under the new Standing Order (68A) Members had no means of distinguishing between a Bill the main object of which was the creation of a public charge, and a Bill which involved a charge that was subsidiary to its main purpose. That day, the first Bill involving expenditure since the passing of the new Standing Order was down for Second Reading, and he understood that the Government proposed only to take one stage at that day's sitting. The hon Member concluded that such was the first Bill to be italicized. Now that both types of Bills involving expenditure were to be italicized, it would not be possible for Members to distinguish them. The hon. Member, therefore, suggested that for the convenience of the House some method of labelling such Bills be adopted, so that Members could tell to which class a particular Bill belonged.

Upon which, Mr Speaker said

If I can be assured that the general wish of the House is that some distinguishing mark should be put on the Order Paper, to distinguish between Bills which will come under the new Standing Order and those in which monetary proposals are subsidiary to the main purpose of the Bill, I shall be quite prepared to consider what method of distinguishing such Bills will be most convenient. I suggest something of this kind, that the words "in pursuance of S O 64A" might be attached to the Motion for presentation of the Bill or Financial Resolution. If something of this kind will meet the convenience of the House, I shall be glad to see if it can be done.

Another hon Member (Rt Hon H. B. Lees-Smith), in supporting the Member for Buteshire and N Ayrshire, also observed that it was the general desire of the House that there should be an interval of, at any rate, a day between taking the Second Reading and taking the Financial Resolution. For

¹ 331 H C Deb 5 s. 1713, 1714.

that purpose, it would be necessary to know whether Bills of that kind would be within the scope of the Standing Order or not.

To which Mr. Speaker said.

If something of the kind will meet with the approval of the House I am prepared to consider it and see whether it can be carried out.

Another Member asked whether it was possible for something to be printed on the Bill for the convenience of private Members, upon which the Prime Minister suggested that the views of the House be collected through the usual channels and

convey them to you, Sir.

Mr. Speaker.

I can only ascertain the views of the House in that way.

The full Report from the Select Committee, the evidence laid before it and the debate in the House of Commons both before and after the presentation of the Report, should be read in detail certainly by every Clerk-at-the-Table oversea in the Lower House, if not in the Upper House also. It is in such reports and proceedings where the real practical reasons and the history of Parliamentary procedure of the House of Commons are to be found. But until the reader can find time for such a task it is hoped that this article will give a useful outline of the subject.

IV. HOUSE OF COMMONS · PENSIONS SCHEME FOR M P.'S

BY THE EDITOR

A QUESTION in the House of Commons¹ on this subject was dealt with in the last issue of the JOURNAL,¹ and, on June 22, during a debate² in the House of Commons upon the Motion for increasing the salaries of M P.'s from £400 to £600 p a, the Prime Minister (Rt Hon Neville Chamberlain) remarked, that he was aware that a number of Members were very much concerned about cases which had come to their knowledge where a man had been a Member of the House for a number of years and having ceased to be a Member, either through age or infirmity, or because he had lost his seat, found himself without means of employment and therefore without means of subsistence. He (the Prime Minister) knew that hon Members thought it would be a proper and gracious thing if, on the occasion of raising the general level of salaries of the House, they were to institute at the same time some kind of pension fund to be contributed to by some compulsory deduction from the new salary from which a pension might be awarded to persons who had served a certain number of years in the House, and had arrived at a certain age. Whatever its merits, it could not, said the Prime Minister, be carried into operation by Resolution. It would require legislation. But it was not a matter which in his judgment should be hastily decided, because any scheme of pensions must be actuarially sound. If eventually some scheme was evolved from an inquiry he did not exclude the impossibility of introducing legislation to give effect to it. There was, however, really very little analogy between such a pension scheme as he believed had been suggested and an ordinary pension scheme for employees. An ordinary pension to an employee is one of the inducements offered to him to enter employment and to give continuous and whole-time service. In this case a pension based on the salary that a Member receives would not be an inducement to him to enter the House. The question whether he would be in a position to obtain a pension would be quite problematical and not one that depended upon himself, for his constituency might not always choose to return him, and, of course, there was no

¹ Vol V, 28

² 325 H C Deb 5. s. 1053 to 1055

contract on the one side or the other for continuity or for whole-time service.

Therefore, continued the Prime Minister, there really was no analogy between the two, and, if one took a common form of pension, such, for example, as was in existence in the case of civil servants, teachers and local government officials, the pension was either one-half the existing salary plus a lump sum, or two-thirds the existing salary without a lump sum, the two being practically equivalent to one another, for service which had been continuous for forty years. There was clearly nothing, continued Mr. Chamberlain, that could be compared with that in considering the position of M.P.'s, and if an arbitrary number of years' service in the House was to be fixed as a condition to be fulfilled if a Member was to be eligible for a pension, he thought difficulties would arise at once. There would be the case of the man who was just short of the stated number of years, because the Government had chosen to dissolve a few months earlier than they might otherwise have done. It did not seem that such hard cases, which had given rise to the suggestion, would be met by a pension scheme of that character. "Any scheme," remarked the Prime Minister in conclusion, "on the lines of the schemes in force in the Civil Service and in the local government service is really entirely inappropriate to the circumstances in which hon. Members find themselves in this House. . . There were considerable difficulties in what seems the simplest and easiest way of introducing a scheme of this kind, and I would like to suggest that if this matter is to be proceeded with, it should be only after the most careful and thorough inquiry into the possible methods of dealing with it."

On July 15,¹ the Prime Minister (Rt Hon Neville Chamberlain) was asked in the House of Commons whether he could state the decision of the Government with regard to the suggested inquiry into the question of a pensions scheme for ex-M.P.'s, to which he replied that he had appointed a Departmental Committee to examine the practical aspects of the suggestion for a pensions scheme for M.P.'s, the necessary funds to be raised and maintained by personal contributions from Members (whether compulsory or voluntary) without any charge to the taxpayer, and to report the various alternatives. The Prime Minister concluded by saying that on receipt of such report he proposed consulting further with representative M.P.'s on the matter.

¹ 326 H.C. Deb. 5. s. 1479

On October 21¹ another question was asked as to whether the Prime Minister could state the recommendations of the Departmental Committee, to which he replied that the Recess had delayed the investigations of the Committee and that he was not in receipt of their Report which he understood would be ready in the course of a month or thereabouts.

On November 30² and December 14³ further questions of a similar nature were asked by the same Member. December 23⁴ he asked the Prime Minister what action the Government intended to take on the Departmental Committee Report recently issued on the subject, to which another Minister replied, on behalf of the Prime Minister, that he was making some inquiries but was not then in a position to make any statement on the subject.

A further question was asked on December 23.⁵

The Departmental Committee appointed by the Prime Minister, which consisted of Sir Warren Fisher, G.C.B. (Chairman), Permanent Secretary to the Treasury; Mr. G. S. W. Epps, C B, etc. (Actuary), Sir H. E. Fass, K.C.M.G., etc. (ex-Financial Secretary, the Sudan), and Sir James Rae, K.C.B., etc (Under-Secretary to the Treasury), duly presented their Report.⁶ It consists of fourteen pages medium 8vo and an Appendix showing I, Composition of House of Commons on July 30, 1937, by age and Parliamentary service, II, Terminations of Membership in period January 8, 1924 to July 30, 1937: Part 1, giving an analysis by duration of service and number of times returned, and Part 2, an analysis, by cause of termination (excluding terminations after service in a single Parliament); III, giving an outline of the French Parliamentary scheme, and IV, quoting Statutory Rules and Orders, 1936, No 1310, Clause 12, governing the investment of funds.

The Report, which is addressed to the Rt. Hon the Prime Minister, states in its opening paragraph.

We were appointed by you to examine the practical aspects of the suggestion for a pension scheme for Members of Parliament, the necessary funds to be raised and maintained by personal contributions from Members (whether compulsory or voluntary) without any charge to the taxpayer and to report to the Prime Minister what are the various alternatives.

Paragraph 4 of the Report states that out of a total House of 614 Members (one bye-election pending) during the period given above in Appendix I, 100 Members commenced their service

¹ 327 *ib.*, 20, 21

² 329 *ib.*, 1875.

³ 330 *ib.*, 1328

⁴ 330 *ib.*, 2147.

⁵ 330 H.C. Deb. 5. s. 2147

⁶ Cmd. 5624 of 1937.

in the present Parliament, 336 served continuously in more than one Parliament, and 178 served in more than one Parliament but with breaks of an average of $4\frac{1}{2}$ years. Of Members who have served over 10 years, who represent over one-third of the House, at least 100 are over 60.

Paragraph 6 deals with the analysis shown in Appendix II, and states that during the $13\frac{1}{2}$ years under review there had been 1,438 M.P.'s, of whom 614 were sitting Members on July 30, 1937. Of the remaining 824, whose membership had terminated, 309 had sat in one Parliament only, 157 in two, 93 in three, and the balance, 265, had been elected to Parliament four times or more. Analyzing the terminations by years of membership, 427, *i.e.*, over half had 5 years or less and 175 from 6 to 10 years. Of the remaining 222 who had been in the House for 11 years or more, one half only, *i.e.*, about one-eighth of the total number whose membership had terminated in that period, had served for 16 years or over.

The causes of termination of membership after sitting in two or more, or three or more Parliaments were classified as follows:

| <i>Terminations</i> | <i>Number of Times Elected.</i> | |
|--|---------------------------------|-----------------------|
| | <i>Two or more.</i> | <i>Three or more.</i> |
| By Death | 91 | 72 |
| By Peerages, Judgeships, Governorships, etc. | 59 | 53 |
| At Dissolutions— | | |
| (i) seeking but not securing re-election | 179 | 98 |
| (ii) not standing for re-election | 155 | 113 |
| Others (during course of a Parliament) | 31 | 22 |
| Totals all causes | 515 | 358 |

These figures, the paragraph continues, may serve to indicate the field from which beneficiaries under a pensions scheme would emerge. If, therefore, a grant had been made to all Members who were over 60 years of age at termination, who had served in at least 3 Parliaments, and whose total membership was. (a) 11 years and over, or (b) 6 years and over, it would be seen that the total numbers fulfilling these alternative conditions would be:

| | (a) | (b) |
|--|-----|-----|
| At Dissolutions— | | |
| Not re-elected | 29 | 41 |
| Not standing | 49 | 68 |
| Other terminations (excluding Peerages, Judgeships, Governorships, etc.) | 8 | 9 |
| | 86 | 118 |

Paragraph 7. The Committee then considered the practicability of a scheme on the analogy of those in force in many employments, whereby, in consideration of suitable contributions from all Members, a pension would be granted on termination of membership to each Member who satisfied the appropriate conditions. As membership of the House of Commons, however, began and ceased at varying ages and its duration might be no more than a few months or years, or may even extend to several decades, the lack of homogeneity and the impossibility of predicting the average rate of cessation of membership in future precluded even approximate actuarial calculation of the probable cost of a pension system as generally understood, but it was clear that the individual contributions required to finance such a system would be extremely high in relation to a given rate of pension.

Paragraph 8 shows the following statement giving the average of the annual premiums required by eight of the leading insurance companies under policies taken out at various ages for deferred annuities commencing at ages 60 and 65.

| <i>Age next Birthday at Entry.</i> | <i>Annual Premium for Annuity of £100 Commencing at Age—</i> | |
|--|--|---------|
| | 60 | 65 |
| | £ s. d. | £ s. d. |
| 30 | 24 16 8 | 16 8 4 |
| 40 | 44 12 6 | 27 13 4 |
| 50 | 106 8 4 | 55 3 4 |

The annual premiums at ages over 50 at entry increased very rapidly, and, in the extreme case of a Member aged 60, the provision of an annuity of £100 commencing at that age would involve a lump sum payment of about £1,230. Again, immediate value of an annuity of £100 commencing at 65 was about £1,040. In its application to the older existing Members of the House, therefore, a contributory pensions scheme of this type would either require contributions of prohibitive amount, or result in such meagre pensions as to be of little use. Arrangements of this nature, moreover, would involve considerable difficulty when membership was interrupted and the ex-Member was unable to continue his contributions. The Committee therefore concluded that a scheme in which the

pension was related in each case to the Member's own contributions would be unsuitable.

Paragraph 9 deals with the French Parliamentary Pension Scheme, details of which are outlined in Appendix III, but as the scheme in force in the French Parliament involves a subsidy from the Exchequer, and as it had been laid down in connection with the proposal for the institution of a pension scheme for the House of Commons that no liability should be imposed on the taxpayer, the French scheme was outside the Committee's terms of reference and did not afford a useful precedent. This scheme is, however, dealt with more fully later.

Paragraphs 10 and 11 read as follows:

10 *Members' Fund*—We next turned to a suggestion which had been made by a number of Members of Parliament that a House of Commons Members' Fund could be instituted, contributions to which would be fixed at a moderate level while the grant of pensions on termination of service would be confined by a process of selection to a sufficiently small number of beneficiaries to enable sums of reasonable amount to be available for ex-Members of long Parliamentary service who on cessation of membership had passed the age for renewed employment and who had not adequate means of financial support. In our view a scheme of this sort is both practicable and suited to the very special circumstances which require to be taken into account. On the one hand, the majority of Members do not require financial provision to be made for them after the conclusion of their membership. On the other, it is found that in a certain number of cases a Member who has spent many years in Parliament is unable after the cessation of his Parliamentary salary to support himself in the most modest manner which comports with the dignity of that Institution. It is with such cases that the suggested Fund is intended to deal.

11 Before a scheme of this sort is adopted, decisions will have to be taken on the following matters

- (i) The extent of the field from which contributions are to be drawn and the amount of those contributions
- (ii) The qualifications to be prescribed as to age and service as a condition for the grant of a pension
- (iii) The measure of discretion in the administration of the scheme to be conferred on the managing body, this body might either be required to apply without deviation the qualifications and rules laid down or be subject only to a general observance of such qualifications and rules as guiding principles, or again the administration of the available funds might be left to its sole discretion without any limitation
- (iv) The amount of pension to be granted, *e.g.*, whether it should be a uniform flat rate of a prescribed amount or such pension as would bring the income of the ex-Member to that amount.

- (v) The reconsideration of the amount of the pension either in the light of a change in the financial circumstances of the recipient, or in the light of the resources of the Fund
- (vi) The inclusion of power to make non-recurrent grants to ex-Members who are not eligible for pension under the prescribed conditions, either pending an election or in other circumstances.
- (vii) The inclusion of power to grant pensions to widows or other dependents of ex-Members, and if so the amount of such pensions
- (viii) The date from which the scheme should become effective for the purpose of award of pensions and the definition of its scope as regards persons who had already ceased to be Members of the House at that date

Paragraph 12 stated that the difficulties of forecasting impending calls upon the Fund and of administering its available resources to the best advantage would in any case be great. Apart, therefore, from any other objection which might be felt to reliance on optional contributions, the necessity of assuring to the management of the Fund a known and permanent income over a definite period pointed, as a practical measure, to placing a statutory obligation on all Members of the House of Commons to contribute to the Fund.

Paragraph 13 was as follows

As to the amount of the contribution, our investigations lead us to believe that a contribution of £12 a year, involving a levy by deduction from salaries of an exact £1 a month, would be generally acceptable, and that it would not raise questions of the return of their contributions to Members not personally benefiting from the Fund. We have accordingly taken this figure as a basis for the calculations below. With a house of 615 Members, it produces an income of some £7,000 per annum when allowance is made for temporarily vacant seats and for intervals between Parliaments.

The first part of paragraph 14 dealt with the finance, scope and benefits of a pensions scheme. The Committee were therefore accordingly of opinion that in the grants of pensions regard must always be had to their capital value. In other words, the total amount received in contributions during any Parliament should be treated as representing, in effect, the sum available for the purchase of annuities. With an annual income of £7,000, representing about £25,000 during a Parliament of average duration, they estimated on certain assumptions, the more important of which were indicated in the

Report, that it would not be prudent to award new pensions involving an annual charge of more than about one-tenth of the latter sum for cases selected in respect of the Parliament in question. The Committee's fraction of one-tenth was related to the estimated average cost of the pensions, namely, about ten years' purchase.

The Committee also considered that it was impossible to forecast what the probable number of cases to be met from the Fund would be, and indeed it had not been possible to ascertain with any precision how many pensions might be required during the period 1924 to 1937, if a Fund had then been in existence. The Committee had, however, made certain calculations as to the extent of assistance in the form of pensions which the Fund could afford, and for that purpose they had made the following assumptions

- (i) that eligibility for pensions will be confined to present and future Members who have had considerable Parliamentary experience, measured either in years of Parliamentary service (e.g., ten years) or by the number of times they have been returned, and who, except in cases of breakdown of health, are over 60 years of age at the date of termination of service;
- (ii) that pensions on termination of membership owing to ill health before the age of 60 will be a small proportion of the whole;
- (iii) that the pension will be such amount as is required to bring the income from all sources of the ex-Member up to £150 a year;
- (iv) that grants to dependents will be confined to the award of pensions to widows of ex-Members who die while in receipt of a pension or of Members who would themselves have been eligible for pension; and
- (v) that the pension to a widow will be such amount as is required to bring her income from all sources up to £75 a year.

The resources of the Fund, based on the suggested compulsory contributions of £1 a month, would enable the provision of about eighteen awards on average to ex-Members and their widows during the course of each Parliament if the full pension on the rates mentioned above was needed in each case, the position being proportionately improved if, owing to private means, full pensions were not always required.

The Committee in paragraph 16 stated that on the assumptions made above as to the number of pensions granted the accumulated Fund would ultimately reach a total in excess of £50,000. It was evident that in a scheme under which the grant of pensions was elastic, not only as regards the amount of the award but also the age at which it commenced and other matters, the assessment of future liabilities could only be

measured on somewhat broad lines. Actual valuations of the Fund should, however, be made at periodical intervals, say every five years, to ascertain its progress and to ensure that the proper relationship was maintained between the liabilities and the assets

Paragraph 17 read as follows.

Donations and Bequests—It is probable that once a Fund of this character has been instituted, it will attract substantial donations and bequests over and above the statutory contributions which constitute its secure income. Such has been the experience of other foundations, and in view of the prestige of the body with which this Fund will be associated and the corporate spirit characteristic of the House of Commons, the additional revenues so made available for the objects of the Fund may eventually be large. We are obviously not in a position to take account in our calculations of any such problematical income.

Paragraph 20 refers to the appointment of a Custodian Trustee and a Committee of Management and remarks that the collection from Members' salaries of the fixed contribution if authorized by Statute could be effected by existing machinery, and it should be possible to provide in considerable measure any secretarial and clerical assistance required by the Trustee or Committee of Management without extra cost to public funds, or charge against the Fund. The Statute should, however, give power to employ and remunerate from the Fund such staff as might be required, and to defray any incidental expenses incurred.

This paragraph then went on to deal with the system of investment of the funds, and stated that it was usual in the case of superannuation funds established in connection with trade or industry for contributions to the Fund to be allowed as deductions for Income Tax (and Sur-Tax) purposes from the income of the contributors and for the income of any invested fund to be exempt from Income Tax. The Committee thought that any scheme such as they had described should enjoy similar treatment, and they suggested that steps should be taken by means of a provision in the Finance Act next following the initiation of the scheme to give the scheme the same exemption privileges.

Paragraph 21 read as follows

It would no doubt be desired that the accounts of the Trustee, including the annual account of the Fund, should be audited by the Comptroller and Auditor General. Subject to the exclusion therefrom of all names of beneficiaries, the audited accounts and

the Report of the Auditor thereon should be required to be presented to the House of Commons. Provision should be included accordingly in the Statute.

It would probably be desired also that the actual valuations of the Fund, which we have suggested should be made quinquennially, should be carried out by the Government Actuary, who would of course be available at any time to give such actuarial advice as might be required. Any valuation of the Fund should be required to be presented to the House of Commons.

Nothing further, however, in regard to pensions for Members of the House of Commons has transpired up to the time of going to press with this issue, except that on February 3, 1938,¹ a similar question to the previous ones was asked to which the Prime Minister replied that when he announced the appointment of the Committee, he said that when he received their Report he would consult certain hon. Members on the subject, but that he had not yet had an opportunity of doing so.

The French Parliamentary Pensions Scheme This scheme is a contributory scheme for Members of the Lower House (Chamber of Deputies), whose present Parliamentary salary at the then current rate of exchange is £440 p.a. The scheme provides that in return for compulsory contributions of about £24 p.a. in the 4 years following a Deputy's first election and £12 p.a. thereafter, a pension is payable as of right at the age of 55, varying according to length of membership from £55 p.a. after 8 years' membership to about £139 after 28 years' membership. In addition, a pension is payable at half the appropriate rate to the widow of a Deputy who has satisfied the prescribed qualifications and who dies, whether before or after commencing to draw pension, together with orphans' allowances of one-twentieth the Deputy's rate for each child during minority. Deputies have the option of paying twice the above rates of contribution and receiving double the benefits. Pensions are not payable during membership of either House. A Deputy under pension age who fails to retain his seat at an election or who becomes a Senator must continue to pay contributions to maintain his pension rights, but if he has contributed on the higher scale he may continue payment on the lower, with appropriate modifications of pension.

To quote from a recent report in *The Times*,² however, in order to qualify for a maximum pension of 40,000 f. (£225) a Deputy must be 55 years of age and have paid a monthly contribution of 900 f. over a period of two Parliaments (8 years),

¹ 331 H.C. Deb. 5, s. 371, 372

² August 10, 1938.

making a total of 86,400 f (£487), but he need not have sat in two Parliaments, for if not returned after only sitting in one Parliament he may continue paying into the Fund and in due course draw a pension. On the other hand, a Deputy who is reasonably sure of constant re-election can spread his contributions over a greater number of years and so reduce their incidence. Furthermore, a Deputy may choose to pay smaller contributions with a lower aggregate and receive a pension in proportion. The salary of a Deputy now stands at 83,000 f. (£472) p.a.; he also enjoys such facilities as, free first-class railway pass, underground and 'bus transport, a generous free travel allowance for his family, franking privileges, stationery, free baths, unlimited food and drink at the Parliamentary buffet for 30 f. p.m., and free typing service with a slight charge for stenography. His unavoidable outgoings are 300 f. p.m. towards the cost of railway vouchers.

Much, however, depends upon the political party to which a Deputy belongs. The Financial Secretary of the Communist Party draws all the salaries of its Deputies *en bloc* and doles out 2,500 f (£14) p.m. to each Deputy, the remaining 4,000 f, or so, going to the Party funds. In return, the Party provides a research service for documenting speeches and a special free correspondence service with stenographers, and thereby keeps a watch upon the contents of all outgoing letters. A particularly active Deputy belonging to this Party may be returned a little extra of his own money, provided he makes an unusual number of speeches in the right vein. Deputies belonging to the Socialist Party receive their Parliamentary salary in full, but contribute 1,000 f. p.m. to their Party, and the Radicals 500 f, but not all the Radicals remember to do so. In addition there are certain obvious expenses incurred by a Deputy in his own constituency, and rents in Paris for those representing distant constituencies.

In a sub-leader of *The Times*,¹ however, it was reported that a large number of the Government's supporters in the House of Commons had indicated to the Prime Minister their dissent from the proposals of the Departmental Committee, whose Report has been already dealt with, to grant pensions to beneficiaries selected from ex-M.P.'s, and that it cannot be said that the Report has been greeted with any fervour, and the representations which were made to the Prime Minister were the result of the further consultations which Mr. Chamberlain foreshadowed before the Report was issued. The recent

¹ July 29, 1938.

increase of the M.P.'s salary from £400 to £600 is also referred to. The application of a means test may also not find favour, and the leader concludes by saying that. "Enough has been said to make it doubtful whether a satisfactory scheme has yet been devised for a body like the House of Commons, which differs so profoundly from other bodies."

V. HOUSE OF COMMONS · PRIVATE BILL PROCEDURE—LOCAL LEGISLATION CLAUSES

BY THE EDITOR

IN pursuance of the Prime Minister's reply to a question,¹ towards the end of 1936, the House ordered² the appointment of a Select Committee on this subject consisting of 7 Members, 3 to form a quorum, with power to send for persons, papers and records, the terms of reference being those stated by the Prime Minister in his reply abovementioned. On April 22,³ the Report was duly Tabled and ordered to be printed.⁴ The Committee sat on ten days and took evidence from the Chairman of Ways and Means, the Deputy Chairman, Mr. Speaker's Counsel, the Chairman of the Committee of Selection, the Clerk of the House, and from representatives of the Committee and Private Bill Office, of two Government Departments, of the Society of Parliamentary Agents and of the Association of Municipal Corporations.

The Committee, in its Report, begins by stating that by the terms of reference it was directed to examine two questions: (1) The need for any alteration in the present procedure in Committee on Private Bills containing Local Legislation Clauses, and (2) the advisability of any rearrangement in the respective functions of the Chairman of Ways and Means and the Committee of Selection in regard to Private Bills in general. To quote from certain paragraphs of the Report:

3 In their consideration of the first of these questions your Committee heard conflicting evidence. On the one side it was represented to them that the present procedure in Opposed Bill Groups was resulting in a serious lack of uniformity in Local Legislation clauses. Two reasons for this were advanced. It was said that committees of this nature must, to some extent, lack continuity of experience. It was also stated that when some clauses in a Bill were hotly opposed and the fight between parties engaged the attention of a Committee for a considerable period of time, there was a danger of the unopposed Local Legislation clauses receiving less attention than their importance merited.

* * * * *

On the other side it was admitted that in the past there might have been a lack of uniformity of decision in regard to Local Legislation clauses. It was felt, however, that the application

¹ See JOURNAL, Vol. V, 20

² 318 H.C. Deb. 5. s. 1518, 1519.

³ *Ib.*, 1928.

⁴ H.C. Paper 112 of 1937, with evidence (H.M.S.O., 3s. 6d.).

of the new Standard Clauses which had been drafted as a result of the Report of the Committee on Common Form Clauses¹ of the Session 1935-36 and which were now generally accepted, would go some way towards removing this objection

* * * * *

4. It was pointed out in all the relevant evidence taken before your Committee that the objections already indicated did not apply to the Committee on Unopposed Bills. But it was said that this Committee was overburdened with work and it was feared that, unless some relief could be found for them, they would be unable adequately to examine, within the time at their disposal, the increasing number of Bills and Provisional Orders referred to them. This was advanced and was accepted as an additional argument for some alteration of the existing procedure

* * * * *

8. After a careful consideration of the alternative proposals and of these² objections, your Committee have come to the conclusion that a case has been made for a more fundamental alteration in the present procedure in regard to Local Legislation Bills than is represented in this second body of evidence. While they would be very unwilling to involve parties in unreasonable inconvenience or expense, they believe that, if effect were given to their recommendations, the additional cost or delay would be inconsiderable. They are, therefore, of the opinion that an alteration of procedure is desirable, but they consider that, in principle, opposed Local Legislation clauses should continue to be sent to Private Bill Groups

9. Your Committee recommend that provision be made at the beginning of each session for the appointment of a Chairman and the nomination of a panel by the Committee of Selection for the consideration of unopposed Local Legislation Bills and clauses.³ They recommend that four members should be chosen from this panel from time to time to sit with the Chairman and consider Bills and portions of Bills referred to them, and that three should be the quorum. They recommend that Mr. Speaker's Counsel should act as assessor to this Committee and that, on the recommendation of the Chairman of Ways and Means and by leave of the House, they should have power to hear Counsel in exceptional circumstances

10. They recommend that the partition of Bills should be the responsibility of the Chairman of Ways and Means. They consider, moreover, that he should be allowed full discretion both in partition and in the reference of Bills and parts of Bills to the different Committees. But they think that, where possible, partition should be avoided. If, for example, an opposed Bill contained only one or two unopposed Local Legislation clauses

¹ H C Paper No 162, 1936

² See also paragraphs 6 and 7 of the Report

³ Out of a total number of 1479 clauses in Private Bills in one Session, 776 were "local legislation" clauses, and of these 87 had Petitions against them (9. 632).

of minor importance, in their opinion, the Chairman of Ways and Means should direct the Group to examine the Bill as a whole

In the case of unopposed Bills they consider that a Bill largely Local Legislation in character should be referred to the new Committee and that one containing only a few Local Legislation provisions should be referred to the existing Unopposed Bills Committee

11. These recommendations lead your Committee to the expression of their views in regard to the second part of their orders of reference. If the new procedure is to function smoothly, it seems to them that the Chairman of Ways and Means must be in even closer touch with the progress of Private Bill Legislation than he is at present.

They accept the evidence of the Chairman of the Committee of Selection with reference to the successful working of that Committee in relation to the grouping of Bills under the existing system. But, in view of other evidence they have heard, they consider that, if effect were given to their recommendations, it would be necessary for the Chairman of Ways and Means to have in his hands the grouping of opposed Bills and the fixing of dates for their hearing, as well as the reference of Bills to the new Local Legislation Committee and to the Unopposed Bills Committee. The Committee of Selection would continue to nominate members to serve on Groups

12. Your Committee realize that, if their recommendations were adopted, the work and the responsibility of the Chairman of Ways and Means and the Deputy Chairman would be considerably increased. It has, indeed, been in their mind that, under existing arrangements, the additional burden might be too heavy. They, therefore, recommend that, in order to strengthen the position of the Chairman of Ways and Means and to facilitate his task, he should be given a greater measure of control over the progress of Private Bills in their passage through the House.

Some of the stages through which Bills must pass are narrowly controlled by Standing Orders. Your Committee do not consider that the Chairman of Ways and Means should have power to override existing limits. But they believe that, if he had the right to direct within those limits the setting down of Bills on the Order Paper, it would contribute both to his convenience and to a general acceleration of Private Business

The above information in regard to the Report from the Select Committee in Private Bill Procedure (Local Legislation Clauses) would, however, be incomplete without some reference to the Report of the Committee on Common Form Clauses in Private Bills already referred to and quoted in the last issue of the JOURNAL.¹ This was a Committee appointed by the Chairman of Ways and Means with the following terms of reference:

¹ H.C. Paper 162 of 1936 (H.M.S.O., 4d), JOURNAL, Vol. V, 20, n. 2.

To consider clauses included in recent Private Bills as clauses of common form, to which objection has been taken with a view to forming an opinion whether or to what extent such clauses or any of them are necessary or expedient, and whether or to what extent they go further than is requisite for dealing with the mischief they are intended to remedy, and to report what action should be taken thereon

To show the nature of the personnel of such a Committee it consisted of the Deputy-Chairman of Ways and Means (Captain the Rt. Hon. R. C. Bourne, M.P.), Colonel Geoffrey Cox, C.B.E. (Parliamentary Agent); Sir Frederick Liddell, K.C.B., K.C.; Mr. J. M. Newnham, LL.D. (Solicitor), Sir Harry Pritchard (Parliamentary Agent); Sir David Reid, M.P.; and Mr. H. G. Williams, M.P. This Committee was assisted by memoranda supplemented by oral explanations and suggestions by Government officials, two being from the Home Office, four from the Ministry of Health, and one from the Ministry of Transport, all Departments closely concerned in proposed Private Bill Legislation in its relation to subjects coming under their administration.

Some 200 clauses were passed in review as being of frequent occurrence in local legislation Bills, ranging over the sets of subjects given in the Four Schedules to the Report, such as streets, buildings, sewers and drains, sanitary, infectious disease, food, public buildings, parks, lands, aerodrome undertakings, etc.

The object of the Committee was to arrive at clauses of common form in regard to the above range of subjects, so that Private Bill Legislation thereon shall be uniform to whatever local authority, etc., the particular Bill would apply.

It may be specially mentioned that in regard to the aerodrome undertaking clause,¹ the Committee came to the conclusion that, apart from this clause, the settlement of the form of aeronautical clauses must be deferred until some experience had been gained of the working of the Air Navigation Bill,² which was about to be placed on the Statute Book. Certain principles, however, emerged from the discussions, namely:

- (1) That it is essential that the regulation of aircraft *whilst in the air* should be entrusted to the central authority, and that, therefore, no clause in a Private Bill giving any such jurisdiction to a local authority should be allowed,
- (2) Subject to (1), that Harbour Authorities may be given regulations and charging powers in respect of seaplanes on the

¹ Second Schedule

² 26 Geo. V and 1 Edw. VIII, c. 44.

lines allowed in the Mersey Docks and Harbour Board Act,¹

- (3) That where clauses are inserted enabling Local Authorities to require the raising of the height of chimneys (*vide* 116, Third Schedule to the Report) the Secretary of State for Air must be given a voice when the chimney is within one mile from an aerodrome

The investigations of these two Committees furnish much information of interest to Parliaments overseas as showing both the usefulness and justice of a uniform system in regard to the provisions of Private Bills in order that local legislation on the same subject may not vary overmuch from district to district.

On November 24² the Prime Minister was asked whether he had now considered the recent Report of the Select Committee on Private Bill Procedure (Local Legislation Clauses), and, if so, what action he proposed to take with regard to its recommendations

The Prime Minister (Rt Hon. Neville Chamberlain) replied that it was the intention of the Government to bring forward an experiment which would, he hoped, secure the main objects of the Committee's recommendations and at the same time meet the somewhat divergent views expressed before the Committee. Should the experiment not prove successful, said the Prime Minister, the matter will no doubt require further consideration. The following outline of the proposals were circulated in *Hansard*.

The objects which the recommendations of the Select Committee, presided over by my Rt. Hon friend, were designed to achieve were

- (1) to relieve the Deputy-Chairman from the very heavy burden which the present system imposes on him.
- (2) to secure greater uniformity in the treatment of clauses of a Local Legislation character contained in Opposed Private Bills
- (3) to give to the Chairman of Ways and Means greater power of control for expediting the progress of Private Bills.

It is hoped that these objects may be realized by the adoption of the following proposals.

¹ 1936

² 329 H.C. Deb. 5. s. 1213 to 1215.

Object (1).

- (a) by increasing somewhat the number of members on the panel from which the Committee on Unopposed Private Bills is selected,
- (b) by enabling that Committee to sit in two divisions,
- (c) by authorizing the Chairman of Ways and Means to nominate one of the members of the panel to act as Chairman at any meeting of the Committee of a division thereof at which neither the Chairman of Ways and Means nor the Deputy-Chairman is present.

Object (2):

- by providing that the Counsel to Mr. Speaker shall sit as an assessor to any Committee on an Opposed Private Bill when considering any local legislation clauses contained in the Bill,

Object (3):

by making arrangements for securing closer co-operation between the Chairman of Ways and Means, the Committee of Selection, and the Committee and Private Bill Office.

The proposals under heads 1 (b) and (c) and (2) will require certain modifications of Standing Orders. As the proposals are of an experimental nature the modifications will be submitted to the House in the form of a Motion for a Sessional Order.

VI 1937· COMMONS PUBLICATIONS AND DEBATES COMMITTEE¹

BY THE EDITOR

FROM time to time the Select Committee of the House of Commons appointed by the House each Session to assist Mr. Speaker in the arrangements for the Reports of Debates, and to inquire into the business side of these important subjects, has referred to it, for investigation, other matters of special interest. Such a subject, in 1937, was the rules of the House with regard to the distribution of evidence taken by Select Committees and of documents put in before them, which have not been presented to the House. It is therefore proposed in this Article to follow the course of events in connection with this inquiry and to give extracts from the Committee's Reports, from the evidence taken by it and from the documents there presented, all of which are of first-rank interest and importance, not only to Clerks-at-the-Table in Oversea Parliaments and Legislatures and to the other officials thereof whose special duty it is to be responsible for the multitudinous details in connection with Select Committee work, but to M.P.'s, to Government Departments and to members of the public coming into contact with Parliamentary investigation by Select Committees with power to take evidence and call for papers. Another aspect of the subject-matter of this Article is its business side—for Parliaments are becoming more and more expensive to run—in the printing and publication for Parliament of its debates and other matter, so necessary if the people of the country concerned are to be informed directly and officially of what is going on in their representative assembly.

On November 16, 1936,² the House of Commons set up this Committee with the usual terms of reference, the Order being.

That a Select Committee be appointed to assist Mr. Speaker in the arrangements for the Reports of Debates and to inquire into the expenditure on Stationery and Printing for this House and the public services generally.

Members were nominated and the Committee was given power "to send for persons, papers and records," and to report from time to time, 3 to be the quorum.

¹ See also H.C. Paper 126 of 1932, JOURNAL, Vols. I, 44, 45 and V, 26-27.

² 317 H.C. Deb 5 s 1474

Instruction.—The subject with which we have principally to deal, however, was instituted on February 4¹ by the following Order of the House:

That it be an Instruction to the Select Committee on Publications and Debates to consider the rules of this House with regard to the distribution of evidence taken by any Select Committee of this House, and of documents presented to any such Committee, which have not been reported to the House, and to report on the desirability of regulating the procedure by Standing Order.

First Report.—On March 2² the First Report³ of the Committee was presented to the House and “ordered to lie upon the table, and to be printed” This First Report in reporting progress stated that it had been brought to its notice that the Controller of His Majesty’s Stationery Office—usually referred to as “H.M.S.O.”—would shortly be obliged to buy new type for use in the Official Report,⁴ and that the Committee therefore met to consider the choice of type and style to be used in the future. Technical evidence was taken, with the result that the Committee decided to suggest to Mr. Speaker the adoption of the type and style now actually in use.

On March 3⁵ it was ordered that a message be sent to the Lords requesting that their lordships will be pleased to give leave to a certain Lords official to give evidence, and on the following day a reply message was received acceding to the request.

Report pursuant to Instruction.—On May 26⁶ the Report⁷ from the Committee (pursuant to the Instruction above-mentioned) was tabled and ordered to be printed. The Committee reported that they had taken the evidence of the Principal Clerk, Committee and Private Bill Office of the Commons (Mr. O. C. Williams, M.C.); the Principal Clerk of Private Bills and Private Committees of the Lords (Mr. E. C. Vigors, C.B.); the Clerk of the House of Commons (Sir Horace Dawkins, K.C.B., M.B.E.), and the Controller H.M.S.O. (Sir William Codrington, C.B., etc.).

In paragraph 4 of this Report the Committee quoted the following Resolution of the House as the basis of the present practice in regard to the distribution of evidence

That according to the undoubted privileges of this House, and for the due protection of the public interest, the evidence taken by any Select Committee of this House, and documents pre-

¹ 319 *ib.*, 1932

² H.C. Paper, 74 of 1937

³ *See*, *Hansard*. *See also* JOURNAL, Vol. V, 26, 27.

⁴ 321 H.C. Deb. 5 s. 370

⁵ H.C. Paper, 74, 127 of 1937

⁶ 321 H.C. Deb. 5 s. 187.

⁷ 324 *ib.*, 278.

sented to such Committee, and which have not been reported to the House, ought not to be published by any member of such Committee, or by any other person. (April 21, 1837)

This resolution, the Report went on to say, was strictly interpreted, in accordance with an Instruction given by Mr. Speaker to the Committee and Private Bill Office in December, 1932, as follows:

I am informed that there is a growing tendency on the part of Committees to ignore the rule prohibiting the issue of copies of evidence during the progress of an inquiry. The rule must be strictly observed except in cases where a Committee, which holds its sittings in private, considers it desirable to issue copies to a Government Department.

The present position, observed¹ the Committee, therefore, is that neither a Committee as a whole, nor individual members of it, nor the Clerk, have any authority to issue copies of the Minutes of Evidence or of papers printed for the use of the Committee (before such evidence or papers are reported to the House) to any person outside the Committee, except for the witnesses' copies which are to be retained with corrections.² Exceptions have occasionally been made where it has been thought desirable that a prospective witness should comment on the evidence given by a previous witness. But such an exception can only be made with the permission of Mr. Speaker.

The Committee further observed³ that nevertheless, although it was a breach of privilege for any person to publish evidence taken before a Select Committee until such evidence had been reported to the House, such privilege was not ordinarily enforced; meetings of Select Committees were normally open to the public and reports of the proceedings appeared in the Press from time to time. The privilege, however, did exist and might be enforced when it was thought that an abuse had occurred in reporting. Thus there was a certain anomaly in the position.⁴

Sir Horace Dawkins⁵ did not consider that there was any real demand for a change from the present practice.⁶ Under it, the privilege of the House over all reporting was maintained; while Mr. Speaker had a discretion with regard to the issue of copies of evidence to prospective witnesses. Sir Horace pointed out that if publication, or a considerably wider distribution, of (uncorrected) evidence not yet reported were allowed, a fresh anomaly would arise, since the House was not

¹ Para. 5

² Para. 6

³ For new S O 56A, see JOURNAL, Vol. VI, 26

⁴ Para. 7

⁵ Para. 9

⁶ See also Q 191.

allowed to discuss any matter which was under consideration by any of its Committees. Thus Members of the House would be debarred from discussing a matter which might have become one of public comment.

Paragraphs 11 and 12 of the (Instruction) Reports, which contain the Committee's recommendations, read as follows:

11. Your Committee have made a very careful comparison between the difficulties inherent in the present practice and in suggested alternatives, and have considered the desirability of regulating the procedure by Standing Order. They are of the opinion that there are not sufficient grounds for recommending any change in the present practice.

12. But your Committee are of opinion that the attention of the Chairman of any Select Committee should be specifically drawn to the practice with regard to the distribution of evidence, and to the power of any Select Committee to ask leave of the House to report from time to time, if, for particular reasons, they deem it desirable to publish evidence taken before them from day to day.

Second Report.—On July 27¹ the Second Report² of Select Committee was tabled and ordered to be printed. This Report deals principally with recommendations upon the evidence taken from the Controller of His Majesty's Stationery Office.

The Committee considered the system under which H.M.S.O. publications were classified, issued and priced, to be satisfactory. The gross annual revenue from sales of such publications was about £250,000, and moreover this sum is increasing by about £5-10,000 every year.

The publications issued by H.M.S.O. are divided into two classes, Parliamentary Papers and Non-Parliamentary Papers.

Treasury Circular.—The decision as to whether a particular departmental paper shall be classed as "Command" or "Non-Parliamentary" is taken by the department concerned, subject to a Treasury Circular of September 6, 1921, an extract from which is given as Appendix III of the Report, which reads as follows.

EXTRACT FROM TREASURY CIRCULAR NO. 38/21

TREASURY CHAMBERS,
6th September, 1921.

FORM AND DISTRIBUTION OF GOVERNMENT PUBLICATIONS

SIR,

I am directed by the Lords Commissioners of His Majesty's Treasury to refer to Treasury Circular 20A 21 of 13th May last, and to state that My Lords have had under consideration the

¹ 326 H.C. Deb 5. s. 2876.

² H.C. Paper 74, 127, 160 of 1937

steps necessary to secure an immediate reduction in the expenditure on stationery and printing incurred by H M. Stationery Office on behalf of Public Departments

ISSUE OF PARLIAMENTARY PAPERS

(1) In continuance of Treasury Letters S/5948 of the 25th April last, My Lords have further reviewed the present practice in regard to the issue of departmental publications as Parliamentary Papers. Parliamentary publications comprise

- (a) those issued by Order of either House or in response to an address to the Crown,
- (b) those presented to either House or both Houses in compliance with statutory requirements, and
- (c) "Command" Papers

Papers issued by Order of either House or in response to an address to the Crown will continue to be printed under the present arrangements. With this exception, My Lords consider that the present practice of issuing Departmental publications as Parliamentary Papers should be drastically modified, not only in the urgent interests of economy but to meet the expressed wishes of the Authorities of the House of Commons.

The presentation by Departments to the Houses of Parliament of papers "By Command" should be discontinued except in the cases of documents relating to matters likely to be the subject of early legislation, or which may be regarded as otherwise essential to Members of Parliament as a whole to enable them to discharge their responsibilities. Other documents hitherto issued as Command Papers should in future be issued as Stationery Office publications, or, wherever possible, be discontinued.

In particular those publications, the issue of which was suspended during the war and has since been revived, should again be suspended.

In the case of documents at present presented "pursuant to statute," My Lords understand that the act of presentation is not always a statutory requirement, and that in any case the requirement can be met by the presentation of the document either in manuscript or after being printed as a Stationery Office publication. The question whether these documents should be printed as Parliamentary Papers can thus be determined in the same manner as in the case of "Command" publications.

In order that early effect may be given to these decisions, Heads of Departments (in co-operation with the Departmental Stationery Committees which, My Lords understand, have been or are about to be set up in the principal Departments) should arrange for an immediate revision of the existing list of papers at present presented to Parliament by their Departments, whether pursuant to statute or otherwise. As soon as this revision is completed, and in no case later than 25th inst, a report should be furnished to Their Lordships giving a list of such publications showing

- (a) those which it is proposed to discontinue, and
- (b) those which will in future be issued as Stationery Office publications.

In regard to future practice no new paper should be forwarded to the Stationery Office for printing as a Command Paper except through the permanent head of the Department.

* * * * *

GENERAL

(3) With a view to securing further economies on stationery and printing, My Lords desire to bring the following points to the notice of Departments

(a) Certain publications, *e.g.*, the "Labour Gazette" and the "Weekly Return of Market Prices" are at present distributed free to members of the public. All such arrangements, whether covered by standing authority or otherwise, should be reviewed forthwith with a view to their early termination. In no case should they be continued beyond December 31st next, without further reference to their Lordships.

(b) In a few cases the Minutes of Committees appointed by Government Departments (*e.g.*, of the Employment Committees of the Ministry of Labour) are printed. This practice should now cease unless the Controller of the Stationery Office is satisfied in any particular case that the cost of printing is less than that of duplicating. My Lords propose to instruct the Controller of the Stationery Office accordingly.

(c) The further utilization of Government publications for advertising purposes should be carefully considered, and Heads of the Departments, in co-operation with the Controller of the Stationery Office, should bring to Their Lordships' notice cases in which, under existing arrangements, it appears that due advantage has not been taken of this source of revenue.

* * * * *

(e) The Select Committee on Publications and Debates Reports, in their second report dated 27th July, 1920 (House of Commons Paper 165 of 1920), recommended that Departmental Stationery Committees should be set up in all public Departments. My Lords understand that effect has already been given to this recommendation in many Departments. They attach great importance to the prompt establishment of such Committees working in close touch with the responsible officials of the Stationery Office (as recommended by the Select Committee on Publications), and they would be glad to be informed whether such a Committee has now been set up in your Department. Their Lordships are convinced that the steady co-operation of Departmental representatives on such Committees with the Stationery Office forms a most practical means of securing the economies necessary in the existing financial circumstances and demanded by Parliamentary opinion.

I am,

Your obedient Servant,
G. L. BARSTOW.

The rest of the Report which deals with matters of an administrative nature is quoted at length

6 All publications of the Stationery Office are announced in the "Daily Publishing List," copies of which are filed at the Vote Office and in the Library. A Member is entitled to one copy of all such publications of the Stationery Office of the current session as are required for his Parliamentary duties.

In addition, the publication of every Parliamentary Paper is announced in the daily "Supplement to the Votes" (under the heading "Sessional Printed Papers Delivered.") Bills and Estimates are generally distributed to Members, and in the case of other papers thought to be of exceptional importance a general distribution may be made at the request of the Minister concerned. Members receive further notification of Parliamentary Papers not generally distributed, on the "Pink Form," which is circulated to Members twice a week. They can obtain one copy each of such papers by marking this form and returning it to the Vote Office.

Non-Parliamentary Papers can be ordered by means of the "Green Form," which can be obtained at the Vote Office.

7 Since 1931, publications of the Stationery Office, whether Parliamentary or Non-Parliamentary (with certain exceptions), have been priced on a scale system based on the amount of printing in them. Under this system two publications of the same size would be published at the same price irrespective of the probable demand for each. The scale has stood up to now without alteration, and has proved far simpler and more satisfactory than any pricing system previously used.

For publications from crown octavo to royal octavo (which includes all Parliamentary Publications, since they must be in royal octavo size), the basic rate is six pages for a penny.

For publications larger than royal octavo (including foolscap volumes of statistics and Non-Parliamentary volumes of evidence and appendices supplementary to the reports of Royal Commissions and Departmental Committees), the basic rate is two pages for a penny.

There is also a low-priced scale of 36 pages for a penny for pocket size publications smaller than crown octavo, but these are mainly training manuals with regular circulations far exceeding those of normal Government publications.

The finance of the scale system takes into account a rounding up to the nearest price unit, for example, a Parliamentary Publication of 30 pages would be priced at 6d because 5d is not used as a price unit.

Illustrations (other than diagrams in the text), maps and special bindings add to the price and are calculated separately.

Where scales for particular classes of publications existed before 1931 they have been or are gradually being assimilated to the general scale. There was, before 1931, a scale for Parliamentary Publications, but the present general scale is a little more advantageous to the purchaser.

Periodicals have to be published at a uniform price irrespective of the varying sizes of the weekly or monthly issues. For

certain annual reports an effort is made to stabilize the price and avoid upward or downward fluctuations each year. For publications forming part of a definite series a uniform price based on average size is adopted where it seems to be a convenience to the public.

The scale system is not applied to certain works outside the normal ambit of the political, economic, and sociological publishing of the Government—for example, legal and artistic publications of a specialist kind.

8 Your Committee have considered suggestions for securing increased circulation. Experience has shown that lowering the price of a popular work does not tend materially to increase the sales. Free issue can be made on occasion, but in general is subject to Treasury control.

9 The amount of advertising possible is limited by financial and other considerations. The daily, monthly, and specialized lists of Stationery Office publications are sent to all booksellers and libraries that will take them, and to any public men who may make use of them. Newspapers also receive the daily list and review copies. Arrangements are made for publications likely to be of general interest to be announced on the wireless.

10 The system of pricing is substantially self-balancing. Any general system of cheap or free issue is a matter of policy to be decided by Parliament.

The Committee, however, did not make any recommendation on this subject.

The Evidence.¹—It is now proposed to quote from the evidence taken by the Select Committee, upon subjects both of general and special interest.

The names of the witnesses have already been given, 416 questions were asked and a valuable and interesting memorandum and additional memorandum were put in by Mr Williams, and form Appendix I and II of the Select Committee's Report, both of which contain information of value to those members of a parliamentary staff engaged upon this particular branch of the work. These memoranda, however, are too long to reproduce verbatim here, but they will be freely quoted from later.

Mr. Williams was the first witness, and in reply to a question that the chief point was that the practice in regard to the issue of evidence by Select Committees varied, the witness said,² "it can vary, but the present Speaker has made it fairly strict; there is not much variation now," the witness continuing.³

Yes. The Speaker has let it be known that he will not give permission for copies of evidence to be issued to any person outside the Committee unless there is a good case made out for doing so. He said that recently in a letter to a Member of this

¹ See also S.O., 56A (July 15, 1935).

² Q 5.

³ Q. 6

House who raised the point, and it was owing to that that this question has been referred to you, because I think the Speaker felt that the subject had not really been considered in all its bearings for a long time, and it has never been considered by a Committee of the House, and therefore it might be advisable that the Committee should decide whether the present practice was satisfactory from the point of view of general public opinion, including the opinion of Members of this House, on the subject; but he felt he could not make any variations until the House itself had approved some modification specifically. Of course, as you say, it can vary, because other Speakers have taken a different point of view of exactly the same Resolution

To a question¹ as to the collateral evidence taken from time to time over which there is no control, the witness replied:

"I would not say there is no control, because the control of privilege still exists, namely, that Parliament can at any moment come down upon a reporter or upon a newspaper, and say there has been a breach of privilege, simply from the fact that they have reported it. It is strictly a breach of privilege, but it is not invoked unless there is misrepresentation. It is that power to protect itself against misrepresentation that is the most important thing about the House's privileges in this matter. I do not suppose that it is likely that, whatever alterations were recommended, it would be thought desirable to do away with that, because it is the only protection that the House has against misrepresentation.

As to the difficulty in regard to Joint Select Committees the witness was then asked to describe briefly how the practice of the House of Lords differed from that of the House of Commons, to which he replied

It is the fact that for all Select Committees of the House of Lords and Joint Committees this formal entry is made in the Lords' Minutes, which answer to our Votes and Proceedings that the evidence taken before the Joint Committee or the Select Committee, as the case may be, from time to time may be printed, but no copies are to be delivered out except to Members of the Committee and to such other persons as the Committee shall think fit, until further notice. That is simply a book entry, it is not moved as a Motion in the House. That empowers the Committee Office of the House of Lords, in fact, to give out copies to such persons as they think fit, and they do sell them, I understand. The money is collected by some junior clerk; I think as a matter of fact it is a lady typist, or something like that, but the whole of the money that is received is remitted to the Stationery Office. Members of the House of Commons who are members of Joint Committees do in fact connive at a practice which is a breach of the privileges of their own House.²

¹ Q. 10.

Q. 11

In reply to Question 13, in regard to persons getting a copy of the Minutes having to give an undertaking of some kind, the witness said—"They have to give an undertaking not to publish them again, to print them or misuse them. They have to do that except where they are Members of the House of Lords or Members of the House of Commons."

In reply to Question 24, the witness said—"I would like to say at the outset on this point that my own opinion is this I doubt if there is any substantial half-way house between two alternatives: (1) to leave the practice as it is, and (2) openly to abolish it and make available the uncorrected evidence taken by Select Committees sitting in public. I look on my paragraphs 9 and 10¹ as really amplifications of that opinion in the way of showing how difficult it is to find a half-way house."

The witness was then asked² to tell the Committee his point of view with regard to helping witnesses giving evidence in the present position, to which he replied that

As regards witnesses themselves, I do not think they would be at any particular advantage. If they wished to be heard in private, they would ask the Chairman to clear the room and hear them in private

* * * * *

Q 31 You are telling us what advantages there are in the present position?—I do not think the witnesses are under any particular advantage. I do not think it would make much difference to them, except that if you do publish openly, you are circulating uncorrected evidence, and that does, of course, to a certain extent, or may, redound to the disadvantage of the witness. If a man has not been rather specially careful of every word he says, he sometimes finds he has committed a small inaccuracy which he is quite entitled to correct

The two following questions then put to the witness together with his replies are quoted at length:

Q 32 In any law court they can report?—Yes

Q. 33 They might make mistakes?—I do not put it too high. On that I would only quote for record what was said by the Departmental Committee on the Procedure of Royal Commissions, which sat in 1910. In their recommendations they said: "The question as to admitting the Press or public to any and what meetings of the Commission is one for each Commission itself to decide. Similarly, the question whether to publish the evidence from time to time or simultaneously with or subsequently to the Report is one which each Commission can best decide for itself. The generally accepted view has been that

¹ See Appendix I, Part III.

² Q. 30

all evidence given before the Commission and all matters relating to the business and consultations of the Commission should be considered as confidential until publication of the same was specifically agreed on by the Commission as a whole." I only have put that on record. I have no extremely strong views myself, but I do wish, if it is thought desirable that the second alternative¹ should be adopted, to put forward certain considerations upon the actual practical way of doing it.

In regard to a comparison being made between Select Committee publications and *Hansard*, the witness remarked² that "*Hansard* is a Government publication published by the Stationery Office, but it is not printed by Order of this House."

The witness was then asked if *Hansard* was not included in the Resolution passed at the beginning of every session about committing it to the Speaker to have the Report printed, to which the witness replied

There is an entry about the printing of the Votes and Proceedings in the JOURNAL, but I do not think *Hansard* comes into it. The Reports of Select Committees are printed by Order of the House, and, of course, that Order at present only begins when the Report has been received. The printing, which is done for use of the Members of the Committee by order of the Speaker, is really an anticipation of the Order of the House. If it were thought desirable that the proceedings of Select Committees sitting in public should be published in something the same way as the Reports of Standing Committees are, the first necessity would be for the House in some way or other to make an Order to that effect, either by Standing Order, which should refer to all Select Committees, or in the Order setting up the Committee. I think that latter course would be preferable that a special paragraph should come into the setting-up Order or Resolution. The Order would permit the printing of evidence.

Q 39 And publication?—The result you want to get is that the evidence given before a Select Committee should be deemed to be printed by Order of the House. If it is printed by Order of the House, of course, it can be circulated, you need not say published. The only question is whether such an Order should be general or whether it should be specific to each Committee, and again, whether it should be mandatory or permissive. On those points the Committee will probably make up their minds.

Q 40 And whether it should be complete. Suppose the Select Committee decides to clear the room?—I do not think anything except an Order of the House could alter the present position in that respect. A Select Committee can always sit in private if it wishes and it can always give directions to the Shorthand Writer not to take down certain parts of the evidence.

In reply to a previous question,³ the witness had said, with reference to the Resolution of 1837, that it would still exist, but

¹ See Appendix II, last paragraph.

² Q 38

³ Q 46.

it would become perhaps more an interesting feature of antiquity than a guide in practice. In further reference to that Resolution the witness said ¹

But if you were to recommend that the setting-up Motion of a Select Committee should contain some kind of Order which sanctioned publication from day to day of evidence taken in public, it would very largely take away from that Resolution the authority which it now has for regulating the procedure. In fact, the result of such an Order would really be the same as reporting from day to day, which is now done in certain select instances and makes the whole thing perfectly legal from the House of Commons point of view. Then the result would be that the evidence taken before a Select Committee would be looked on as having been reported to the House from day to day. Therefore you would be keeping within the Resolution of 1837 all the time.

Q 48. But that Report from day to day must be qualified by the fact that there may be errors in it such as you have suggested previously in your evidence?—Yes, certainly.

The following questions were then put to the witness:

Q. 49. It is not a final Report?—It is not the Report of the Committee. It is not the final Blue Book, which, of course, will contain the corrected evidence. But that was just the same in the case of the Joint Committee on Indian Constitutional Reform. The uncorrected evidence was reported to the House from day to day, or rather, it was reported and printed without correction because there was no time to correct it, and the correction only took place when the final Blue Book came out.

Q 50. The same thing applies to *Hansard*?—Yes, naturally. May I now in conclusion put on record that the reporting of Select Committees is done by the staff of the Official Shorthand Writer and not by the staff of the Official Reports of Debates? The printing is done by the Stationery Office under the direction of the Committee Clerk and not under the direction of the Editor of the Official Reports. There is no reason why this should not continue. Indeed, it would be much better that it should, because the Shorthand Writer's staff is well equipped for the work of reporting Select Committee evidence. They do not work upon quarter-hour reliefs, as the Standing Committee reporters work, and I think it is important for a Select Committee to have only one Shorthand Writer, who then becomes familiar with the whole subject, and it gives the Committee much more control over the reporting of evidence in cases where they wish to vary it . . .

During the course of the reply to a question² as to cost and speed, the witness observed that "Their contract for printing Select Committees' evidence does not enjoin anything like the speed at which *Hansard* comes out. I think the contract

¹ Q 47.

² Q 51.

time for evidence before a Select Committee is 48 hours after they receive the transcript from the Shorthand Writer ”

When replying to Question 54, the witness said.

The authority of the House for printing evidence from time to time would have to be in such a form that the Speaker or the Clerk of the House could give an affidavit, under the Parliamentary Papers Act, 1840,¹ to protect any person from a libel action. The effect of that Act is that where anything has been printed by Order of the House and contains matter that might otherwise be a ground for a libel action, that action can be barred on the Speaker or the Clerk of the House giving an Affidavit that it was printed by Order of the House.

In regard to the interpretation to be placed upon “ publication,” the following question is of interest

Q 65. The word “ publication ” here bears two meanings “ Publication ” may be printing the Minutes of Evidence in a complete form. Then the other meaning of “ Publication ” is issuing, before the matter is reported to the House, certain parts of the evidence to prospective witnesses. That is another form of publication ?—Yes, or, of course, issuing it to people who were not prospective witnesses

The second witness was Mr E. C. Vigors, C.B. (Principal Clerk of Private Bills and Private Committees, attending by permission of the House of Lords); in reply to a question,² as to what was the practice of the House of Lords, the witness said:

When a Committee on a public matter, or public Bill, is set up, as opposed to a Private Bill Committee, an entry is made in the Minutes of the House of Lords requiring that the evidence should be printed, but that no copies should be delivered out except to Members of the Committee and to such other persons as the Committee shall see fit. That gives a Committee the discretion to show copies of the evidence to anyone to whom they think it is desirable to show them. If anyone applies, as people constantly do, for a copy of the evidence, the Chairman is consulted, and, through him, the Committee, and if the consent of the Committee is given for a person to have the evidence, he is required to sign the following document. “ Uncorrected proofs of the Evidence taken before the Committee, from day to day, are supplied on the following conditions (1) That it is recognized that the copies sold are uncorrected proofs and are not of necessity accurate in detail (2) That they are supplied only for the personal use of the purchaser (3) That they are not to be published in the Press, or quoted from *in extenso* in a newspaper or any other document. I/We agree to observe these conditions ” Then the Minutes are printed in proof, if the Committee has met each day, and on the top of the copy

¹ 3 and 4 Vict. c. 9.

² Q. 77.

that is sold or supplied this is printed "This copy is available only to the person authorised by the Committee to receive it, and is not for publication"

Q 78 In point of fact, what is the actual machinery by which that is carried out?—In the case of such a Committee as the Committee which is now sitting on Gas Prices downstairs, or a Committee on Hybrid Bills, which is a Public Bill Committee considering Bills like the Post Office Sites Bill or the Land Drainage Provisional Order Bills, in which the evidence is not printed by the parties themselves, as in the case of a Private Bill, but by the House, there is a very large demand for the evidence; and it is, in my view, almost essential that they should have it, because Counsel cross-examine on it the next day, they are doing it downstairs now. The Agents, or private individuals—in those cases mostly Agents—apply to the Clerk to the Committee for the number of copies that they want, and if the Clerk to the Committee gets the authority of the Chairman to supply them, they sign that form and deposit it in the Accountant's Office

To the question¹ "Are these Committees held in private or is the public allowed to go in?" the witness said: "I am speaking only of Committees to which the public is admitted. For many years past there has not been a Committee in the House of Lords from which the public has been excluded."

During the course of the reply to another question,² the witness observed: "I should say that in the case of the India Committee, for instance, there was a certain amount of evidence there that was taken *in camera*. That Committee sat in public, but they took a certain amount of evidence which was not in public at all. Lords Committees sometimes do have evidence taken in private. In that way that evidence is kept private, and the private part of it does not go out on these documents at all."

In regard to the presence of the Press and the public at open Committees the following questions were asked:

Q 98. The Press is present?—The Press is present through all these open Committees, unless they are turned out but at intervals on several Committees they have been asked to retire.

Q 99. They can print as full a report as they like?—On everything that takes place while they are present.

Q 100. They could make a verbatim report, if they chose?—Yes, I think they could.

Q 101. Therefore, there would be no breach of privilege if a reporter published in the Press fairly *in extenso* a report of what he had seen and heard at a Committee?—None.

Q. 102. There would be no breach of privilege?—No, I think not.

Q. 103. There is no privilege about the present practice in the

¹ Q. 81.

² Q. 96.

House of Lords ?—No, not in the publication of what they take down

Q 104. Is there any sort of discrimination as to who shall attend to represent the public, or do they just walk in and sit down, as they do in these Committees here ?—Anyone can come, if it is an open Committee, anyone from the street can come in.

The following question¹ was then put to the witness: “ Mr. Vigors, supposing we suggested that we should go further than the House of Lords, and make the evidence available for every member of the public, just like reports in the newspapers, what would be the attitude of the House of Lords or yourself to that suggestion ? ”—“ I could only speak, of course, of my own attitude. With regard to that, I should see a certain danger in publishing a document which was not absolutely correct. It is done in *Hansard*, but to extend the practice to Committees, unless it were necessary, might be inadvisable ”

The witness was then asked² “ Is not the objection in the case of the Select Committee a technical one, that the proceedings of the Select Committee are not known to the House of Commons, and therefore it becomes a breach of privilege and undesirable to publish the evidence that is taken ? Whereas in the case of *Hansard*, the House of Commons is already in possession of the speech vocally, and therefore publication would not be a breach of privilege of the House. But when it is published by a Committee before the House has any cognizance of it whatever, there you have a technical breach; is that not so ? ” To which he replied: “ Of course I speak with great diffidence on any question affecting privilege, but I rather thought that each House was guardian of its own privilege, and if the House of Commons chooses to make an order, such as is made in the House of Lords, to the effect that one of their Committees may hand out these documents to people to whom it chooses to hand them out, there can be no breach of privilege ”

In reply to Question 110, the witness said: “ In a Joint Select Committee, the House of Lords procedure has always ruled and governed the proceedings traditionally from the time when they first started; the question is put in the House of Lords form. There is no casting vote, and all the procedure that is followed is that of the House of Lords, and the Chairman of the Committee has regularly, in the case of these proceedings, sanctioned on his discretion the sale of copies to persons.”

The witness was then asked.³ “ It is evidence of a Joint Select Committee ? ”—“ Yes. It is evidence of a Joint Select

¹ Q 105.

² Q 108.

³ Q. 117.

Committee It is the property of the Lords, too, and the Lords I suppose might say, ' You can do what you like with your half of it, but we are going to do what we like with our half of it, and we are going to issue our half ' ”

Mr Williams, the first witness, was then recalled and further examined, and in reply to Question 151 he said “ At present all Select Committees have complete discretion whether to report their evidence or not, and whether to hear it in public or not, or whether portions of it should be taken down or not There is no reason to change that, whatever other change you make ”

The following questions were then put to the witness :

I cannot see if we propose to make that change that we are doing anything that hampers the prestige of the Committee, or its powers, or the secrecy of its movements as it wants All we are doing is to simplify the whole procedure by letting the public have what we are getting ourselves if they like to pay for it, and if they want it ?—I quite agree If the Committee decide to recommend that, all I put forward is that it should be done in some way or other by Order of the House, and I think the most convenient way would be to have some formula in the setting-up Resolution of the Committee which did secure that the Committee could print its evidence from day to day, or such evidence as it thought fit, and that that evidence should be deemed to be printed by Order of the House, and be deemed to be reported to the House. If that were secured, all difficulties of privilege and all difficulties as to the Resolution of 1837 would be disposed of.¹

Q. 154 How do you get over the question of privilege in that event ? Is the comparison between *Hansard* and the publication of Minutes of a Committee a good comparison to make ? For instance, *Hansard* is simply a report of the proceedings in the House of Commons which, although the question of privilege still remains, leaves the publication free as far as the public is concerned, but when you come to the Report of a Select Committee, which should have no direct contact with the public, but is a servant of the House, is it not going beyond what a Committee should do to publish its evidence, and sell copies of the evidence ?—It would be so, I quite agree, and I have said it would be so, unless it is done by Order of the House If it is done by Order of the House, the House waives its own privilege

The witness was then asked:² “ If you like we will take it from the point of view of privilege and convenience to the public—convenience to the operation of the Select Committee itself ? ”—“ What I have been urging is that if you make any changes you should go further than the House of Lords has gone.”

¹ Q 153

² Q 169.

In reply to Question 172, the witness said. "The House has never taken up the position that a Committee is at liberty to publish its evidence On the 'contrary'"

The following questions were then put to the witness:

Q. 181. You suggest a definite Resolution of the House rather than an amendment of the Standing Order?—Those are the two alternatives I think it is harder to amend Standing Orders If you do the whole thing by amending the Standing Order, you have got to foresee all possible exceptions, whereas if you can make it specific to a Committee, you can always vary your Order for the particular Committee

Q. 182 That would apply particularly to the instruction when a Committee is appointed, the words are added "with power to call witnesses," and so on That is where you would suggest it would be put?—Yes. It would have the same effect, of course, because it is an Order of the House.

Q. 183 Do you think, if we did make an amendment to the Standing Order of either of these characters, that there really would have to be time for discussion?—That I cannot say

Q. 184 A great many Standing Order amendments have been made in the last few years, without discussion?—Yes, but I should say that both Mr Speaker and Sir Horace Dawkins would say that they did not think that a change of this kind could be made without some notice being taken of it in the House That is my opinion

Q. 185. That is what I wanted to get at, that there would almost inevitably have to be discussions?—Yes, that is my opinion.

Q. 186 Do you think you can get something on paper for us definitely to consider, which would be the actual practical steps we should have to take in order to give effect to the alternative which we have been considering this afternoon?—Yes.

The third witness was Sir Horace Dawkins (to whom the Chairman put the following question); Mr Williams was at the same time also called and examined

Q. 191 Will you, first of all, tell us your own feeling as regards the difficulties of the present procedure, out of which this enquiry has arisen?—I do not think the present procedure is working at all badly. There is no real demand, as far as I know, for any change This arose out of one case of one Committee, but it is very rare that there is a considerable demand If the present procedure remains, when a Committee particularly wishes to give its evidence out to other people, it only has to go to the Speaker and ask for leave. Then it is not a formal publication, and it retains all the rights of privilege. I feel that, if you officially publish the evidence, you at once lose all control of it At present, in the House, the proceedings of the House are only published really by the kindness of the House itself. We retain the power of privilege over all proceedings, and if the proceedings in the House are reported unfairly or in any way garbled, we have a right to proceed against any newspaper

that does so. It is a right that has not been often exercised, but it certainly remains. It has been used in the past and may very well be wanted to be used in the future. In fact I may say that a few years ago the Speaker was seriously considering using the right against a certain newspaper which was reporting proceedings on a Bill in an unfair way. There were several discussions as to whether action should be taken. That was brought up by a Member, and the Speaker was quite prepared to rule then that it was a matter of privilege, that the proceedings on that Bill were reported in an unfair and an improper way. I think that is an extremely valuable privilege to be maintained, and it should be maintained just as much by a Committee or perhaps more by a Committee, than by the House. Also, there is another point that I may mention. That the House is never allowed to ask questions or to discuss in any way a matter which is under consideration by one of its own Committees. If you publish reports officially, you will get the position that every paper and everybody else in the world will discuss these things. The House of Commons will be the only people who are debarred from taking any part in a discussion. I feel that that is putting the House in rather an unsatisfactory position. At present, the reports are not published officially, and, of course, you have got entire control, but, if you once publish them officially, you lose nearly all that control.

To the question¹ that the Speaker can permit a printed copy of the evidence to be given if he wishes to the reply was: "His position is this. He adopts the same attitude as the Speaker did in 1837. The proceedings of a Select Committee are printed by his direction for the use of the Members of the Committee. He feels he has discretion to give the Committee leave to send these printed copies of the evidence to certain persons. The present Speaker has expressed the opinion that, so long as the Resolution of 1837 stands, although he is ready to consider all cases on their merits, his discretion does not really go further than giving the Committee leave to send evidence to genuinely prospective witnesses, but not to outside persons, even Members of the House themselves, who are interested in the discussion and who might come in and listen to the evidence."

The Chairman then asked the following question.² "May I just remind the Committee of the definite ruling of the Speaker, who said in 1932: 'I am informed that there is a growing tendency on the part of Committees to ignore the rule prohibiting the issuing of copies of evidence during the progress of an inquiry. The rule must be strictly observed, except in cases where a Committee, which holds its sittings in private, considers it desirable to issue copies to a Govern-

¹ Q. 202.

² Q. 209.

ment Department.' It is quite clear. That means that that forbids them to issue copies, either to prospective witnesses or to Counsel or to anybody else, does not it? That is so, Mr. Williams, is not it?"—"Yes."

The following questions were then asked:

Q. 210 What is the procedure when an application is made to the Committee for the printed evidence? Does it go through the Committee before it reaches the Speaker?—That would all depend upon how the particular person addressed his letter. As a matter of fact the latest instance was a letter from a Member of the House to Mr. Speaker asking if (he or other persons, I cannot remember the terms of the letter) could have copies of the evidence that was being given before a certain Select Committee, and the Speaker said he was precluded from giving that permission, so long as the Resolution of 1837 held good.

Q. 211 Yet there have been cases where the Speaker has given permission for the evidence of a witness to be supplied to another witness who had evidence to give on the same matter, but from a different point of view?—As I say, I do not think there would ever be any difficulty in that, if the person was a prospective witness and the Committee thought it desirable that he should have it, but, in the first place, no prospective witness could claim that as a right, and, in the second place, no person who was not a prospective witness, but who was interested in the discussion, could claim it as a right.

The Chairman then put the following question ¹ "I will ask Sir Horace Dawkins, if we decide that the present rule should be continued, is he prepared to have a growth of this system by which Select Committees may ask for leave from the Speaker, which might, of course, grow to a very large extent? Will that not rather interfere with business, if a Select Committee have in every case to come before the Speaker and ask for leave?"—"I do not think so, because I think it is very rarely that it will be wanted, judging by one's experience in the past."

The witness was then asked:

Q. 226. Then your opinion is that the first alternative is best? At the end of the second alternative it says in paragraph (e). "The fact that this form of Order would more closely conform to the practice of the House of Lords is not an advantage. Would not it be an advantage if the House of Lords and the House of Commons had the same procedure in both cases?"—I do not think so really. I think the position of the House of Lords and that of the House of Commons are very different. As was pointed out by a certain high authority some time ago, when a somewhat similar discussion was going on, there is a great difference between the House of Lords and the House of Commons. The Members of the House of Commons have got

¹ Q. 213.

constituents If this sort of thing is open and pressure is put upon Members to hear witnesses or to hear important bodies, the pressure on a Member of Parliament who has got constituents behind him is much stronger than the pressure on a Member of the House of Peers.

To the question¹ that "It has been stated that the present system is a breach of the Privileges of the House, by reason of the fact that, on these exceptional occasions when evidence is communicated to a prospective witness, the House having no knowledge of the proceedings, it therefore becomes a breach of Privilege, in spite of the fact that the Speaker gives his permission?"—the reply was. "I do not think you could say that is quite a breach of the Privileges, any more than you could say that the present publication in every newspaper of the Debates in this House is a breach of Privilege. Technically it is."

The following question² was then put "It is the business of the House from the date of the appointment of the Committee. The House gives instructions to that Committee, and nothing should come between that Committee and the House until that Committee has reported, otherwise it is a breach of Privilege if any information concerning the proceedings of the Committee go outside the Committee?"—"I do not quite agree I do not think the House quite comes into that. It is a breach of Privilege technically to publish anything either way, but I do not think the fact that the House does not know makes it any more a breach. It makes it more inconvenient, as I was saying, because the House is the only place where it cannot be discussed. That is really my objection to publication, but that is not a question of Privilege. It is an unfortunate situation in which the House finds itself."

The fourth witness was Sir William Codling, who to the question,³ whether there was a separate staff for Select Committee and for *Hansard*, replied "*Hansard* is printed by a night staff, and at present the evidence given before House of Commons Select Committees is printed by a day staff. They are not the same personnel."

During the course of his reply to Question 255, the witness said. "If, however, copies of each day's evidence taken before House of Commons Select Committees were required to be available the morning after each meeting of each Committee, I estimated the cost would be at least £500 a year. If, in addition, each day's evidence were presented, a further cost of £100 to £150 a year would be incurred, owing to the

¹ Q. 241.

² Q. 245.

³ Q. 251.

number of additional copies which would be required for the Vote Office, subscribers to sets of Parliamentary publications, official distribution, and so on."

In reply to Question 256, the witness said "The cost of printing Select Committee evidence in the House of Commons is approximately £1,000 a year. If that were done by a night 'ship,' it would cost 50 per cent more, so the additional cost would be £500 a year."

At this point in the proceedings Sir William Codling and Lt-Colonel N G Scorgie, C.V.O., C.B.E (Deputy Controller H.M.S.O.), were both called in and examined.

To the following question,¹ put by the Chairman:

You will see the first point we want information about, in our ignorance, is the system on which Stationery Office publications are classified as "Command" and as "Non-Parliamentary" papers?

Sir William replied:

Publications issued by the Stationery Office are divided into two classes, (1) Parliamentary Papers, and (2) Non-Parliamentary Papers. Parliamentary Papers come into one of three categories, (a) those issued by Order of either House, or in response to an address to the Crown, (b) those presented to either House or both Houses in compliance with statutory requirements, and (c) Command Papers. Classes (a) and (b) are, I think, self-explanatory. Class (c), Command Papers, these are presented by a Department, in theory by Command of the Crown, without a formal Order of either House. The presentation by Departments to the Houses of Parliament of Papers by Command is limited to the cases of documents relating to matters likely to be the subject of early legislation, or which may be regarded as otherwise essential to Members of Parliament as a whole to enable them to discharge their responsibilities. All publications issued by the Stationery Office other than those contained in the three categories I have mentioned—that is (a), (b) and (c), of Parliamentary Papers—are classed as Non-Parliamentary Publications.

The following questions were then asked in regard to "Command" Papers:

Q 266 You say they are theoretically by Command of the Crown?—Yes

Q 267 In actual practice, what happens?—The Minister presents them, in actual practice

Q 268 The Minister of the Department concerned?—Yes.

Q 269. If he presents them, they are then Command Papers?—Yes

In the course of the reply to Question 277, it was stated that, "Command Papers are limited to Royal Octavo in size, and Non-Parliamentary Papers may be any size."

¹ Q 263

The following questions were then put in connection with the "Pink" and "Green" forms:

Q 293. How do you deal with them in relation to the Pink Form?—The Pink Form exists for the convenience of Members in obtaining copies from the Vote Office

Q 294. Would all Papers be put on that form?—No. If they are non-Parliamentary Papers, Members can obtain those by filling up the Green Form and sending it to me.

Q 295. Does that mean that they can get any copy of any publication by sending you the Green Form?—Within reason

Q 296. Within reason. Only one copy is issued to each Member?—Yes, and that has to be a copy of a publication of the current Session—(Colonel Scorgie.) The actual rule is that it must be the current Session, and required for the Member's Parliamentary duties

Q 297. How is the Green Form circulated?—In the Vote Office

Q 298. In the Vote Office itself? Is there any other information?—There is a daily list of all non-Parliamentary Papers in the Vote Office

Q 299. I take it that all the Parliamentary Papers are circulated on the Pink Paper, is that so?—(Sir William Codrington) They are asked for by Members on the Pink Paper.

Q 300. Are they all included on the Pink Paper?—Yes, they are all circulated on the Pink Paper.

Q 301. They are all on the Pink Paper?—Yes.

Q 302. The Pink Papers are Parliamentary Papers; the others come round in a Roneo-ed issue to us?—Day by day, in the Vote Office.

During the course of the reply to Question 303, the witness made the statement below:

Papers are priced according to the amount of type area there is in them. Before that, Parliamentary Papers were priced on a scale, so many pages for so much money, and non-Parliamentary Papers were priced, each of them individually, according to their actual cost, compared with their estimated sales. Now all Papers included in the scale system are priced on this one uniform system. At the end of the year we take out the cost and we take out the revenue, including an allowance for the official copies, and we aim at balancing those two, so that there is neither a profit nor a loss over the whole business

During the course of the reply to Question 305, the following information was given: "We have abolished all distinction between statistics which cost more money to print and ordinary letter-press."¹

"The Stationery Office aims at making neither a profit nor a loss, so that we have very little to play with. There is always a lag in private industry, but there is no lag with us, where we are not making profits."²

¹ Q. 305.

Q. 306.

The following questions were then put.

Q. 310 How does the annual turnover compare year by year in the quantity that you sell?—It is slowly increasing. The gross turnover is now about a quarter of a million, and it is going up by about £5,000 to £10,000 every year.

Q. 311. About what percentage of that is on-cost?—By "on-cost" you mean overheads and discounts to booksellers?

Q. 312 Yes—all that sort of thing?—And waste copies?

Q. 313 No, I should not put waste copies in it, I do not think that is an on-cost—but standing charges, and all that sort of thing?—50 per cent is our normal percentage for on-cost.

Q. 314. That must be very heavy compared to printing in, for instance, newspaper offices, and that sort of thing, must it not?—Private publishers allow 100 per cent for their on-costs, almost automatically.

To the question¹ as to what the booksellers got for handling the Coal Commission Report, 1931, the reply was "They get 25 per cent."

Q. 324 That is very steep, that is a good commission?—It is less than many private publishers give.

In reply to Question 346 the witness said: "The price of *Hansard* does not depend on the general scale. The price of *Hansard* has been fixed now for many years. Many Members will remember that two or three prices were tried and again, of course, the argument was, and still is used, that if *Hansard* is priced at 1d, it will be in every home, particularly every working-class home. But I think one has only to look at the verbatim report in the newspapers to see how they are being cut down year after year, and libraries can get *Hansard* at half-price, as they can get all Government publications at half price, but again, I think from what I myself have heard from libraries, the demand for the verbatim reports from their readers is not great."

The following questions and replies refer to *Hansard*:

348 Are Members taking more or fewer free copies?—They all take free copies.

349 They all get one free copy?—That must vary very considerably.

How many free copies will Members ask for in the House? Do you know the number of free copies that are given out to Members?—In the Vote Office?

350. Yes —But we have no control whatever.

351 It is all costing money?—Yes.

352. You would know how many copies went out without being paid for?—Yes, but we could not distinguish between the free copy which the Member took, for example, from the Vote Office, to give to a friend who was interested, and a free copy

¹ Q. 323.

which he bona fide wanted because a Debate was being referred to, and he had left his own at home

354 Coming back to *Hansard*, it would hardly be worth while, from the public standpoint, to consider whether to lower the price again to 3d, as against 6d.½?—It would not, on our experience, on all the figures we have got. It would not increase the effective circulation, which I assume is the thing you are interested in

356 (Sir Wm Codling) I think the honourable Member has to remember that one big factor is that on 6d. a copy the book-seller gets 1½d, and on 3d a copy he only gets ¾d, and he is nothing like so interested in distributing a copy at ¾d as he is at 1½d

357 Could you say off-hand how many libraries do take *Hansard*?—(Colonel Scorgie) It is about 150

361. What is the definite charge at present for an annual subscription to *Hansard*?—(Sir Wm Codling) The subscription price for the *Hansard* daily parts is £2 10s (per session)

372 What would be the total circulation of *Hansard*?—It is somewhere in the neighbourhood of 3,000 or 3,500

The following information in regard to revenue from waste paper is of administrative interest.

383 May we pass on to the third item, which was raised by one of our Members as regards the amount of Waste Paper sent back from public Departments? Have you any statement about that?—That varies round about 10,000 tons a year, in total

385 Do you have a contract for that?—Yes

387 Removal?—Removal, the provision of bags, cartage and so on, and certain restrictions on disposal. So we never get what might be called the full market value of waste as it appears in the trade journals, because a contractor has to do a good deal more than an ordinary waste-paper buyer in the open market.

389 This waste is mainly what comes from the waste-paper baskets of Government Departments?—It is a very mixed lot of waste.

398. That would only be a thousand. What would a thousand tons be worth?—about £1,500.

The Memoranda.—The MEMORANDUM and an ADDITIONAL MEMORANDUM put in by Mr Williams cover 15 pages and are brimful of information of interest and importance not only to the Clerk-at-the-Table, but to other members of a Parliamentary staff as well as to all others interested in the subject.

Mr Williams's first Memorandum constitutes Appendix I to the Committee's Report; the Additional Memorandum forms Appendix II

The Appendix I Memorandum, dated February 8, 1937, consists of three parts. I—PRESENT PRACTICE, II—HISTORICAL,

and III—POINTS FOR CONSIDERATION. Part I contains 5 paragraphs, which will be given in full

(1) *Reporting and Printing of Evidence*—By a practice of the House dating at least from 1814, evidence given before a Select Committee is, unless the Committee otherwise decide, taken down verbatim by an official shorthand writer. From the shorthand writer's transcript, which is sent by him to the Stationery Office printing press, the proof copies of the Minutes of Evidence are printed. When so printed they are still technically in the custody of the Clerk to the Committee, and he alone gives instructions to the Stationery Office printer. Papers ordered to be printed for the use of the Committee are sent by the Clerk to the printer.

(2) *Members' and Witnesses' Copies*—Under the direction of the Clerk to the Committee a proof copy of each day's Minutes of Evidence and of any papers ordered to be printed from time to time is sent by the printer to each Member of the Committee, a few complete copies are also sent to the Clerk, together with the special witnesses' copies. A witness's copy consists solely of that portion of the evidence that covers the examination of the witness in question, and it is sent to the witness for correction and return, this being stated on a slip gummed to the copy. From corrected copies received from witnesses and from Members the Clerk makes up a corrected copy of the Minutes of Evidence, which he sends to the printer, so that the corrections may be embodied in the Minutes of Evidence when published with the Committee's report. If the Committee considers it undesirable to report the evidence, the Clerk recalls all copies that have been issued to Members and any witnesses' copies not returned, and sees that they are destroyed. Any unissued copies remaining at the printer's are destroyed, and the type is broken up. The shorthand writer's transcript and any copy of it are returned to the Clerk.

(3) *Issue of Copies to Other Persons Prohibited*—The following statement is printed at the bottom of the front page of each proof copy of the Minutes of Evidence and of any papers printed during the Committee's inquiry

"Great inconvenience having arisen from the Publication of Minutes of Evidence taken before Committees, and of Papers, etc., laid before them, it is particularly requested that members receiving such Minutes and Papers will be careful that they are confined to the object for which they are printed—the special use of the Members of such Committees."

Also, by the notice attached to a witness's copy, on which the above statement is not printed, the witness is prohibited from making "any public use of this Evidence."

The statement is based upon the rule of the House as stated in a Resolution of the House of 21st April, 1837 (92 C.J. 282), and has already been given,¹ and upon the remarks made by the Speaker in the debate on that Resolution (H.D. 3rd Series, 38 col. 196) (see sec. 6 below), where he stated definitely that

¹ See p. 158 ante.

evidence was only printed "on the faith and clear understanding that it was printed for the use only of Members of the Committee" and that "the Committee has not any power to print without the permission of the Speaker, and that does not go further than to print for the use of the Committee."

The effect of this as regards Minutes of Evidence is that not only is publication, in the everyday sense of the word, forbidden, but also any act which might, in a legal sense, amount to "publication." In practice, the matter is at present regulated by an Instruction to the Committee and Private Bill Office, signed by the present Speaker in December, 1932, which runs as follows:

EVIDENCE BEFORE SELECT COMMITTEES

"I am informed that there is a growing tendency on the part of Committees to ignore the rule prohibiting the issue of copies of evidence during the progress of an inquiry. The rule must be strictly observed, except in cases where a Committee, which holds its sittings in private, considers it desirable to issue copies to a Government Department."

In accordance with this Instruction, neither a Committee as a whole, nor individual members of it, nor the Clerk, have any authority to issue copies of the Minutes of Evidence or of papers printed for the use of the Committee to any person outside the Committee, except for the witnesses' copies that are to be returned with corrections. It is to be noted that, strictly interpreted, this Instruction prohibits the issue of any part of the Minutes of Evidence even to a prospective witness, but this strict interpretation has not been followed when, for the purposes of the inquiry, it was desirable that a prospective witness should comment on evidence given by a previous witness. But in such a case the Chairman ought properly to obtain the permission of Mr. Speaker, who has let it be understood that, while he wishes his Instruction to be strictly observed so long as the Resolution of the House of 1837 holds good, he is always ready to consider on their merits applications made to him by the Chairman for relaxations of the strict rule.

Therefore, as the matter stands at present, any application by a person or body of persons, including a Member of the House, outside the Committee for copies of the Minutes of Evidence has to be refused, whether or no payment is offered.

(4) *Position as regards the Public*—Unless a Select Committee decides to sit in private, members of the public, including Press reporters, are admitted to the Committee room while evidence is being taken.

As regards the Press, the position is analogous to that of the reporting of debates in the House or in Standing Committees (see May, 13th ed., pp. 82-84). To put the matter shortly, although orders prohibiting the publication of debates and proceedings of the House are still retained upon the Journals, they are not enforced except in cases of misrepresentation. May says: "So long as the debates are correctly and faithfully reported, the privilege which prohibits their publication is waived." Under the same practice, no objection is taken to faithful reports published in the Press of public sittings of Select

Committees As a rule such reports are short and selective, for obvious reasons of space

It is to be noted, however, that another and special declaration of privilege can be invoked against the reporter of evidence taken before a Select Committee, since it is declared a breach of privilege to publish evidence taken before a Select Committee *until it has been reported to the House* by the Resolution of 1837 This privilege also is waived in general, but comes into force if any abuse occurs, cases of which are cited in May, 13th ed., p. 83. A recent instance of an abuse occurred in the Select Committee on the Betting Duty in 1930, when, a précis of a witness's evidence having been handed by courtesy to the Press reporters, certain of them published a summary of the whole précis, although the witness had only been examined on certain paragraphs The Chairman, in taking notice of the matter, commented severely on the "breach of courtesy" (which was also a breach of privilege).

Whether other members of the public are debarred from taking notes of a Select Committee's proceedings (for they are not allowed to do so in the galleries of the House) has never been tested. There is reason to suppose that members of the public, other than Press reporters, have taken notes of evidence before Select Committees It has even been alleged that a custom has grown up of permitting outside shorthand writers to attend Committees and to sell copies of their reports to persons interested in the inquiry. To say that such a custom is recognized by Members or officials of this House is quite untrue in any case, where such a proceeding were discovered immediate notice should be taken of it, for it is a breach of privilege. Nevertheless, notes may have been taken by persons for their own use, though no official cognizance has been taken of their action. They do so at their own risk

In fine, as May remarks, there is a certain anomaly in the position, which is accentuated in this case by the fact that, whereas any publication of evidence taken before a Select Committee before report is prohibited, reporters *are* permitted to take notes and the persons who attend the sittings actually *hear* the evidence before the House receives it

(5) *Practice of the House of Lords.*—The anomaly, partly real, partly apparent, is accentuated by the difference between the practice of this House in respect of Minutes of Evidence and that of the House of Lords, which also governs, by custom, the practice of Joint Committees. This practice, unlike that of this House, is not based on any consideration of "privilege." Briefly stated, it is as follows: when a Select or Joint Committee is going to hear and print evidence, an entry is made in the Lords Minutes of Proceedings, without formal Motion in the House, in these words:

"Bill (or Matter)—The Evidence taken before the Joint (or Select) Committee from time to time to be printed, but no copies to be delivered out except to Members of the Committee and to such other persons as the Committee shall think fit, until further notice."

Under the authority of this order, the Committee Office of the

House of Lords issues copies of Minutes of Evidence (uncorrected) as they are printed, both to any Peer who desires them, and also to responsible persons or bodies interested in the subject of the inquiry who give a written undertaking not to make any misuse of them and who pay so much a copy on a scale computed by the Stationery Office. Payment is made to the Committee Office of the House of Lords, but all the money is remitted to the Stationery Office. Such sales have often resulted in a considerable payment from the public towards the cost of publication. If any evidence were required upon the practice of the House of Lords, no doubt that House would give their Principal Clerk of Committees leave to attend for the purpose of giving it. One result of this divergence of practice is that, whereas Commons Members of a Joint Committee are still bound by the rule of privilege in their own House, they do in fact connive at a practice which infringes it. It was therefore thought essential that, for a Joint Committee so important as the Joint Committee on Indian Constitutional Reform in 1934, this House should give explicit leave to the Commons Members of this Committee to report from time to time, and the evidence of that Joint Committee was formally reported every day, thus legalizing a very extensive publication which would otherwise have been a glaring breach of the privilege of this House.

It is, however, undeniable that the Minutes of Evidence taken before a Select Committee of the House of Lords or before a Joint Committee (unless formal objection be taken or some regularizing procedure be adopted) are in fact issued on request to persons outside the Committee in a manner which is not countenanced for evidence taken before a Select Committee of this House, although they are not made available in the Vote Office.

PART II, HISTORICAL. THE RESOLUTION OF 1837 AND FLUCTUATIONS OF PROCEDURE IN RECENT YEARS cover paragraphs 6 to 8 of the Memorandum and deal with *The Resolution of 1837; Copies of Evidence sent to a Government Department, Publication in the Press, Reference in the House to Proceedings before Select Committee, Parliament and the Press and Lord Hartington's Motion of 1875, Forwarding evidence to prospective witnesses, More recent lapses from strict procedure, embracing evidence of practice in 1914, Speaker's permission dispensed with in 1915, Payment for evidence sent to outside persons, the Select Committee on Sky-Writing in 1932, and Exceptions and Rulings since 1932.*

The following is an extract from PART III—POINTS FOR CONSIDERATION.

(9) Is the present procedure satisfactory? If not, how can it best be changed so that the important privileges of the House are still maintained? These are the fundamental questions to be answered, but it is not easy to find simple answers which

equally fit all the aspects from which procedure with regard to evidence requires to be considered.

(a) *Witnesses* —Sufficient distinction has not hitherto been drawn between the supplying of evidence to witnesses or prospective witnesses and the supplying of it to persons or bodies who are simply interested in the proceedings. At present Mr Speaker must be asked for his permission in both cases, though he is more likely to withhold it in the second than in the first. It is indisputable that a Committee will often wish to hear the views of one witness upon the evidence given by another, for which purpose it is an obvious convenience to send the prospective witness confidentially a copy of the evidence on which he will be asked to comment. The difficulty, however, is to draw the line between what is done *for the convenience of the Committee* and what may be claimed as *a convenience, or even a justice, to a witness*. When a Select Committee is set up on a controversial matter, persons and associations of considerable importance are often involved in the issue, which they come to regard as analogous to an issue in civil litigation. On this analogy they claim a right to see all the evidence. If this is refused, one witness may object that he has not had the opportunity of fairly meeting an opponent's case, another may say that he cannot decide whether to offer evidence at all (when this is left voluntary) without knowing what has been said, and all point out the anomaly that, while they may attend the Committee and make as copious notes as they please, the printed transcript of what they have heard is denied to them. They also refer to the different procedure in the House of Lords.

If, therefore, discretion were to be given by the House to a Committee to send evidence to prospective witnesses, the question would still remain whether any safeguard could be devised which would prevent abuse and, in particular, the growth of the view of a Committee as a semi-judicial body, with the consequential growth of a claim *on the ground of justice to a party* for what was only intended to be *a convenience to the Committee* —a development which would be against all the traditional conception of the functions of a Select Committee.

(b) *Persons or bodies interested in the Inquiry* —To persons or bodies interested in a Committee's inquiry, so far as they are prospective witnesses, the considerations in (a) apply. But claims to receive printed proofs of evidence are often made by them, apart from any prospect of giving evidence, either on the general ground that there is no real distinction between permission to attend sittings and permission to receive (or buy) the transcript of evidence given at the sittings, or on some particular ground, *e.g.*, that another interested body, one of whose members is a witness, is receiving the printed proofs of evidence.

It must be definitely said that the issue of printed proofs of evidence to other persons than prospective witnesses amounts to "publication" and is contrary to the Resolution of 1837. There is no logical division between issue of evidence to such persons and issue to the public at large, including Members of the House. If it were to be thought desirable that this House

should permit proofs of evidence to be subscribed for by any members of the public, even with an undertaking not to reprint, or republish, the only logical procedure would be for the House to waive its privilege specifically and allow the Stationery Office to sell copies of the (uncorrected) proofs, copies being also made available for Members in the Vote Office. This would amount to doing what can now be done if a Committee has leave to report the evidence day by day. It must be remembered, however, that by existing practice it lies with the Committee to determine whether their sittings shall be held in private or be open to the public. In the event of a day to day publication of the uncorrected proof of the evidence becoming the recognized procedure for a Select Committee sitting in public, it might well be that many more such Committees than hitherto might elect to sit in private. If this were to occur, the slight advantage gained by interested parties in certain cases would be more than offset by their complete exclusion in others. On the other hand, to adopt the procedure of the House of Lords without the specific surrender of privilege by the House would seem to be impossible.

(c) *The Press*—The present practice whereby Press reporters can attend public meetings of a Committee and take down reports is, as has already been pointed out, an anomaly. It is only because the news-value of Select Committee proceedings is usually small, and space in newspapers is limited, that the anomaly is not more glaring than it is. Yet it must be remembered that the *whole* reason for passing the Resolution of 1837 was unauthorized publication in the Press of evidence taken before a Select Committee, after the Committee, by a majority, had decided not to report the evidence from day to day. It is interesting to observe that this decision was reversed a week after the passing of the Resolution.

It is also interesting to note that whereas, sometime before 1875, the reporting by the Press of proceedings in Select Committees of the House of Commons became a tacitly recognized institution in spite of the Resolution of 1837, the effect of this Resolution has had a precisely opposite effect in the House of Assembly of the South African Union, which permits no reporting or publication of any proceeding in a Select Committee—a practice which rests upon a strict interpretation of the Resolution given in 1861 by the then Speaker of the Cape Parliament

* * * * *

if a Select Committee's proceedings held in public excited sufficient public interest (in this case) the House¹ undoubtedly waives, while preserving, its expressed privilege, by which it has power to protect itself against misrepresentation. Yet, it cannot be doubted that the resultant anomaly weakens the case for a strict application of the Resolution in other ways.

(d) *The Speaker, the Committee and the House*—Any suggested change in the present practice must affect the Speaker, the Select Committee and the House, the first because he is the interpreter of the rules and practices of the House, the second if any discretion which it does not now possess is given to a Committee with regard to the issue of evidence, and the third

¹ i.e., of Commons.

since it is difficult to conceive that any such change could properly be made except by Order or Standing Order of the House. Indeed, it is urged that to propose conferring any further discretion on Mr. Speaker than he now conceives himself to have in this matter, or conferring such discretion on a Select Committee, except by Order of the House, would be improper.

(10) *The Possibility of Regulation by Order or Standing Order*—The view that, all things considered, the present practice, as it exists under the authority of the present Speaker, best suits the purposes and traditions of this House could well be sustained; but, even so, the fact that in recent years different Speakers have taken different views of their discretion in the matter points to the desirability of re-enacting, perhaps in a more precise form, the Resolution of 1837. All the more, if, after full consideration of all the aspects of the matter, it were held that an attempt should be made to remove anomalies or present restrictions and definitely to change the procedure, would this best be done by amendment to the Standing Orders. As an example of more precise regulation by Standing Order, the Standing Orders 237-238 and 240 of the New Zealand House of Representatives may be quoted.

Standing Orders of the House of Representatives of New Zealand (1909)

237 The evidence taken by a Select Committee of the House and documents presented to such Committee, and which have not been reported to the House, ought not to be published by any Member of such Committees nor by any other person.

238 The preceding Order shall not apply to the proceedings of a Committee if the House shall have ordered that such proceedings be open to accredited representatives of the Press, and any Committee may, by Resolution reported to and adopted by the House, direct that the whole or part of the proceedings shall be so open.

240 Proof copies of the evidence given before a Select Committee shall be distributed to Members of the Committee only.

It will be observed that No. 237 repeats the wording of the Resolution of 1837, except for the first clause "That according to the undoubted privileges of this House and for the due protection of the public interest", No. 238 makes the House, not the Committee, the arbiter whether the proceedings of the Committee shall be open to the Press, though the Committee may ask the House to adopt a Resolution directing that the proceedings shall be so open, No. 240, on the other hand, is extremely definite, and appears to forbid the issue of proof copies of evidence even to prospective witnesses.

Recently, when this matter was being discussed with the Clerk of the House, the following suggestions for amendments of Standing Orders were tentatively put forward.

(A) *Suggested new Standing Order: Evidence before Select Committees.*—Copies of the Minutes of Evidence taken before a Select Committee having power to send for persons,

papers and records may be sent to such persons as the Committee may think fit. Provided always that nothing in this Resolution shall be taken to deprive the House of the right to proceed against any person publishing such evidence before it has been reported to the House.

(B) *Suggested Amendments to S O 61*, which gives to Select Committees power to report their opinion and observations, together with the Minutes of Evidence taken before them, to the House,

(i) to add at the end:

"and to send during the course of their proceedings a copy of any part of the evidence taken before them to such persons as the Committee may think fit."

(ii) to add at the end:

"The evidence taken from time to time before a Select Committee shall, unless otherwise ordered, be printed for the use of the Committee, but no copies thereof shall be sent except to the Members of the Committee and such other persons as the Committee may think fit."

These three suggestions were made on the assumption that the House would not desire specifically to surrender any privilege or to repeal the Resolution of 1837. Suggestion (A) is the more specific in asserting the privilege, though it is implied in the others. (B) (ii) comes nearest to the order made in the House of Lords when a Select Committee of that House, or a Joint Committee, hears evidence. All of these suggestions, however, are unsatisfactory, since they leave some important questions still in doubt, the most important being whether the discretion thus to be given to a Committee were intended, or not intended, to cover the issue of proof copies of evidence to other than prospective witnesses and whether, in fact, any such words could be interpreted as giving that wider discretion. Moreover (A) uses the phrase "publishing" without any definition of what constitutes publishing. None of them, in fact, would entirely be free from doubt in their application.

It is therefore urged, in conclusion, that satisfactory amendments to the Standing Orders can only be framed after specific conclusions have been reached on the following questions:

(1) Should the Resolution of 1837 be re-enacted in the Standing Orders, and, if so, in what form?

(2) What specific interpretation is it intended should be given to any such re-enactment as regards (a) the sending of proofs of evidence to witnesses, (b) the issue of such proofs to other persons outside the Committee; and (c) the reporting of proceedings in the Press?

(3) What discretion, if any, should be given to a Select Committee in this matter, and is the discretion, if given, in any way to be limited?

(4) Even if thought desirable, is it possible to adopt any practice analogous to that of the House of Lords so long as the declared privilege of the House exists, since it would amount to publication (in the fullest sense) of unreported evidence?

Mr Williams's ADDITIONAL MEMORANDUM, dated March 22, 1937, deals with the publication of evidence taken before Select Committees and is headed, "Note on Alternative Methods of Enacting Change of Procedure."¹ This Memorandum is given at length

If the present procedure^a with regard to publication of evidence is held to be too restrictive and a change in the direction of greater freedom to be desirable, there are two alternative courses open

- (1) that the House should order such uncorrected proofs of evidence to be published as a Select Committee saw fit,
- (2) that the House should, by order, give a Select Committee discretion to send or deliver out copies of the uncorrected evidence to "such persons as they may think fit"

Since all the results of instituting a new procedure cannot be foreseen, it would be better to enact either of these alternatives by an additional order in the Resolution setting up a Select Committee than by a Standing Order, any amendment of which must be made by Motion in the House and therefore occupy time

The following forms of words are suggested

For alternative (1)—

"That if the Committee resolve 'that it is expedient that the Minutes of Evidence taken before them, or documents presented to them, or any parts of the same, be published from time to time,' and report such Resolution to the House, then such Minutes of Evidence and Documents shall be deemed to have been also reported to the House and shall be ordered to be printed"

(Note—It is envisaged that the Resolution of the Committee would be reported to the House in the same way as a Resolution from the Standing Orders Committee and that a book-entry will be made "Ordered that the said Minutes of Evidence and Documents be printed [No]")

The adoption of this form of order would have the advantages:

- (a) that it would bring the publication of the evidence strictly within the ancient rules and privileges of the House, and therefore within the Resolution of 1837,
- (b) that the House would be informed in each case that publication of evidence had been resolved on,
- (c) that the existing machinery for the distribution of parliamentary papers, *i.e.*, the Vote Office and the Stationery Office, could be utilized for the distribution of evidence;

but would have the disadvantage that Committees might be subjected to pressure to come to conclusions other than those indicated by the evidence they have heard.

For alternative (2)—

"That such Minutes of Evidence taken from time to time before the Committee, and such Documents presented to

¹ See Qq. 180-186

them, as the Committee think fit, shall be printed, but that no copies thereof be communicated except to Members of the Committee and such other persons as the Committee think fit."

The disadvantages of this form of order are the following:

(a) The House would be giving Committees a discretion which, if properly exercised, would impose upon them the invidious task of discriminating between the various applicants for evidence, but which being undefined, would authorize Committees to publish evidence that had not been reported to the House, i.e., to do something contrary to the ancient rules of the House, part of which were expressed in the Resolution of 1837, so that

(b) this order could only properly be enacted after an explicit alteration of these rules of the House; such an alteration would not only deprive the House of a protection against misuse of unreported evidence, but also cancel the well-established and salutary rule that proceedings before a Committee cannot be discussed in the House before they have been reported

(c) Any extensive supply of evidence to outsiders under the Committee's discretion would inevitably lead to a demand for Members of the House to be supplied with copies—a demand which it would be impossible to refuse—and so the evidence would be in fact published

(d) The evidence would not be available as are all other papers published by Order of the House, and so the existing machinery for distribution could not be used, and some addition might have to be made to the staff of the House of Commons for this purpose.

(e) The fact that this form of order would more closely conform to the practice of the House of Lords is not an advantage, for the needs, interests and machinery of the two Houses are, and always have been, different. Also it is to be noted that even in the House of Lords, in the case of the Joint Committee on Indian Constitutional Reform, it was held that the usual practice would not cover communication to the Press.

VII. CANADA: CONSTITUTIONAL REFORM

BY THE EDITOR

CONSTITUTIONAL reform continues to engage the earnest attention of statesmen in Canada both at Ottawa and in the Provinces and consequent upon debates in the Dominion Parliament during the year under review, and in view of the general desire throughout the Dominion that the British North America Acts—the Constitution of Canada—should either be amended or displaced by a new Constitution, a Royal Commission was appointed towards the end of that year, the terms of which are given below.

The questions of constitutional amendment and reform and that of appeals to the Judicial Committee of the Privy Council in Whitehall against the findings of the Supreme Court of Canada in respect of Dominion legislation have already been a subject of reference in the JOURNAL.¹ An interesting debate upon the recent Privy Council decisions of 1935 took place in the House of Commons on April 5.²

The object of this Article, therefore, is to keep the reader on the course of the subject. When the Royal Commission has made its report, which is expected towards the end of 1938, its recommendation will duly be dealt with in the JOURNAL.

Attention will first be drawn to an initial debate in the House of Commons at Ottawa

Debate upon Motion to go into Committee of Supply.—

On January 26, during the above-mentioned debate, the Leader of the Opposition (Rt Hon R B Bennett³) raised the issue of constitutional reform, and said that no one failed to realize that a sharp conflict was taking place between the Legislatures and the Parliament of Canada. Some of the Provinces were suggesting the possession of a sovereignty entirely out of keeping with the general principles which had governed them in the past. In fact, this suggested exercise of sovereignty by the Provinces had gone further than ever before.

The second point to which attention might be directed was the ever-present conflict between the Provincial Legislatures and the Parliament at Ottawa in the exercise of their constitutional jurisdiction. In other words, the interpretation of

¹ Vols IV, 14-18, V, 91-99

² CCXIII, Can. Com Deb. 2574-2598

³ CCXI, Can. Com Deb. 267-271

then Constitution had become more difficult and the exclusive powers exercised by the Provincial Legislatures on the one hand and by the Dominion Parliament on the other had come into conflict so frequently with respect to national questions that it was time some remedy was applied. The Dominion Parliament had no power of supervision nor yet the right of effective criticism. Under the Constitution the Provinces in the exercise of their legislative powers had the same plenary right as the Parliament at Ottawa had within the ambit of its jurisdiction. Note the character of the conflicts, continued the speaker, they have been going on, but they had never been seriously dealt with during the 70 years of confederation. For instance, there was the debt problem, and a far more serious problem, that which arose out of the breach of contracts by Provincial Legislatures. Lord Grey, when Governor-General, had pointed out that the lack in their Constitution of any effective powers to prevent those Legislatures from making contracts was a matter for most serious consideration. Take another question, observed Mr. Bennett, the administration of justice: the Parliament of Canada made the criminal law, but the administration rested with the Provinces and the result had not always been entirely satisfactory. Then there was the administration of civil justice; the Provinces determined the number of judges which the Parliament at Ottawa had to provide both for their appointment and salaries, and it was well known that in some Provinces the judiciary were notoriously without work. Then there was another power which had fallen into disuse, the power of disallowance. An ever insistent and increasing demand upon the Federal Treasury had come about, to provide money for the Provincial Legislatures by increased subsidies and grants in order that they might expend it without any limitation or control being imposed upon that expenditure by the power that granted it to them. Canada had enacted a statute that did not provide for a purely federal union. The speaker therefore suggested that a constitutional convention be held consisting not merely of representation of the Provinces by their Premiers, but representative of all phases of political thought, and the same would apply to representation of the Dominion Parliament at such a convention. They would then have a constitutional convention or conference in accordance with the general principles which governed the conference that brought into being the Constitution of their country, the British North America Act. Unless democracy

can be as efficient as a dictatorship it cannot survive, said Mr Bennett, and it could not be efficient in Canada with these sharp conflicts between provincial jurisdiction on the one hand and federal on the other.

The Prime Minister (Rt Hon. Mackenzie King),¹ in reply, said that there was no more important question confronting the Canadian Parliament than that of the necessary amendment of the British North America Act. On all sides there was agreement that amendment was necessary. He remarked that the subject had been very carefully considered by a Select Committee² of their House. Mr Mackenzie King drew attention to the fact that the suggestion made by his Rt Hon Friend had been brought before that Committee "by no less a distinguished person than the Clerk of their House of Commons,"³ but who suggested that a new Constitution be drafted.

Then the Dominion-Provincial Conference⁴ was held which did not help to disclose too obvious a method of amending the Constitution. As to amendments, continued the speaker, which were less comprehensive than a new Constitution, the question arose as to whether it would not be better to proceed in the first instance by having a representative commission consider possible amendments, with all parties in the Provinces and in the Parliament at Ottawa entitled to appear before the commission and give it the benefit of their views and opinions. In conclusion, the Prime Minister said that he agreed entirely with the Rt Hon. the Leader of the Opposition that a way must be found to have the question of the revision of their Constitution considered; and that if there was one problem above another which could only be satisfactorily settled as a result of a united public opinion, it certainly was that of the alteration of their Constitution or the creation of a new Constitution to supplant that under which, thus far, their country had been governed.

Suggested Amendment of B.N.A. Acts.⁵—An interesting debate also took place in the Canadian House of Commons on February 1,⁶ in regard to the proposed amendment to the above Acts, which represent the Constitution of Canada, the subject having been raised by the following Motion by the hon. Member for Rosetown-Biggar (Major J. W. Coldwell), which was negatived

¹ *Ib*, 278-282.

² See JOURNAL, Vol. IV, 14-18

³ Dr. Arthur Beauchesne, K. C., C. M. G., etc

⁴ See JOURNAL, Vol. IV, 16-18

⁵ See JOURNAL, Vol V, 91-95

⁶ CCXI, Can. Com. Deb. 425-463.

That in the opinion of this House, in view of the urgent necessity of effective action, for the improvement of the social and economic conditions of the people of Canada, and in view of the condition of social and other legislation passed by Parliament, during the tenure of office of the late Government, and, in view of the forward-looking legislation recently enacted in the United States and other democratic countries, a special Select Standing Committee be set up to recommend the specific amendments to the British North America Act required to enable this Dominion Parliament to enact necessary and desirable legislation for the better social conditions of the Canadian people.

Appointment of Royal Commission on Dominion-Provincial Relations.—On February 15¹ the Prime Minister (Rt Hon Mackenzie King) by statement in the Canadian House of Commons intimated that the Government had been considering the desirability of appointing a Royal Commission to study certain aspects of the relationship between the Dominion and the Provinces including the allocation of sources of revenue and the financial capacity of the Provinces to discharge their responsibilities, which problem had become acute in the case of the Provinces of Manitoba and Saskatchewan, the depression intensified by drought having drastically reduced the income of the people and consequently the revenue-raising capacity of their Governments. The Commission would investigate the whole system of taxation in the Dominion; study the division of financial powers and financial responsibilities between the Dominion and the Provinces, and make recommendations as to what should be done to secure a more equitable and practical division of the burden to enable all governments to function more effectively and more independently within the spheres of their respective jurisdictions.

Below are given the terms of reference of the Royal Commission and other particulars in connection therewith.

THE ROYAL COMMISSION ON DOMINION-PROVINCIAL RELATIONS

OTTAWA, CANADA,
November 20, 1937.

DEAR SIR,

The public hearings of the Royal Commission on Dominion-Provincial Relations open at Winnipeg on November 29. Eventually all provincial capitals will be visited, and there will also be sittings at Ottawa. All governments have been invited to make representations, and the Commission will hear recognized public organizations on the matters covered by the reference.

¹ CCXI, Can. Com. Deb. 921-923.

Requests have come in from editors for information about the Commission's work, and, in the hope that it may be useful for reference, I am sending you herewith a copy of the Order-in-Council which defined the scope of the inquiry, also a dispatch sent out by the Canadian Press from Ottawa on November 3, following an interview given to the Press by the Chairman, Chief Justice Rowell. This outlines the programme of work for the coming year.

Sincerely yours,
ALEX SKELTON,
Secretary.

PRIVY COUNCIL, CANADA

The following is a copy of a Minute of a Meeting of the Committee of the Privy Council, approved by the Deputy of His Excellency the Governor-General on August 14, 1937.

The Committee of the Privy Council have had before them a report, dated August 5, 1937, from the Right Honourable W. L. Mackenzie King, the Prime Minister, submitting—with the concurrence of the Minister of Finance and the Minister of Justice.

1. That, as a result of economic and social developments since 1867, the Dominion and the provincial governments have found it necessary in the public interest to accept responsibilities of a character, and to extend governmental services to a degree, not foreseen at the time of Confederation,
2. That the discharge of these responsibilities involves expenditures of such a magnitude as to demand not only the most efficient administrative organization on the part of all governments, but also the wisest possible division of powers and functions between governments. That particularly is this the case if the burden of public expenditures is to be kept to a minimum, and if the revenue-raising powers of the various governing bodies are to possess the adequacy and the elasticity required to meet the respective demands upon them,
3. That governmental expenditures are increased by overlapping and duplication of services as between the Dominion and provincial governments in certain fields of activity. That in other respects the public interest may be adversely affected by the lack of a clear delimitation of governmental powers and responsibilities,
4. That representations have been made on behalf of several provincial governments and by various public organizations that the revenue sources available to provincial governments are not in general adequate to enable them to discharge their constitutional responsibilities, including the cost of unemployment relief and other social services and the payment of fixed charges on their outstanding debt, that, consequently, if they are to discharge their responsibilities, either new revenue sources must be allotted to them or their constitutional responsibilities and governmental burdens must be reduced or adjustment must be made by both methods,

5 That representations have been made by provincial governments that municipal governments which have been created by, and derive their powers and responsibilities from, the provinces, are confronted with similar problems, that, in particular, necessary municipal expenditures have placed an undue burden on real estate and are thereby retarding economic recovery, also that the relations between provinces and municipalities are an essential part of the problem of provincial finances,

6. That, finally, it has been represented that unless appropriate action is taken the set-up of governmental powers and responsibilities devised at the time of Confederation will not be adequate to meet the economic and social changes and the shifts in economic power which are in progress without subjecting Canada's governmental structure to undue strains and stresses. The Prime Minister, therefore, with the concurrence of the Minister of Finance and the Minister of Justice, recommends

- 1 That it is expedient to provide for a re-examination of the economic and financial basis of Confederation and of the distribution of legislative powers in the light of the economic and social developments of the last seventy years,
- 2 That for this purpose the following be appointed Commissioners under Part I of the Inquiries Act

The Honourable Newton W. Rowell, LL.D.,
Chief Justice of Ontario,

The Honourable Thibaudeau Rinfret,¹
Justice of the Supreme Court of Canada,
John W. Dafoe, Esquire, LL.D.,
of the City of Winnipeg, Man.;

Robert Alexander MacKay, Esquire, Ph.D.,
Professor of Government, Dalhousie University,
Halifax, N.S., and

Henry Forbes Angus, Esquire, M.A., B.C.L.,
Professor of Economics, University of British
Columbia, Vancouver, B.C.

- 3 That, without limiting the general scope of their inquiry, the Commissioners be instructed in particular

(a) to examine the Constitutional allocation of revenue sources and governmental burdens to the Dominion and provincial governments, the past results of such allocation and its suitability to present conditions and the conditions that are likely to prevail in the future;

(b) to investigate the character and amount of taxes collected from the people of Canada, to consider these in the light of legal and Constitutional limitations, and of financial and economic conditions, and to determine whether taxation as at present allocated and

¹ Since the original appointments were made, the Hon. T. Rinfret had to retire because of indifferent health and his place was taken by Dr. Joseph Sirois, Professor at Laval University.

imposed is as equitable and as efficient as can be devised;

(c) to examine public expenditure and public debts in general, in order to determine whether the present division of the burden of government is equitable, and conducive to efficient administration, and to determine the ability of the Dominion and provincial governments to discharge their governmental responsibilities within the framework of the present allocation of public functions and powers, or on the basis of some form of re-allocation thereof,

(d) to investigate Dominion subsidies and grants to provincial governments

4 That the Commissioners be instructed to consider and report upon the facts disclosed by their investigations, and to express what in their opinion, subject to the retention of the distribution of legislative powers essential to a proper carrying out of the federal system in harmony with national needs and the promotion of national unity, will best effect a balanced relationship between the financial powers and the obligations and functions of each governing body, and conduce to a more efficient, independent and economical discharge of governmental responsibilities in Canada

The Prime Minister, with the concurrence of the Minister of Finance and the Minister of Justice, further recommends that the Honourable Newton W. Rowell, LL.D., Chief Justice of Ontario, be Chairman of the said Commission

The Committee concur in the foregoing recommendations and submit the same for approval

E. J. LEMAIRE,
Clerk of the Privy Council

PROGRAMME OF ACTIVITIES OUTLINED BY CHAIRMAN

(By the Canadian Press)

Ottawa, November 3 —Working plans for Royal Commission study of Dominion-provincial relations, which will centre on distribution of responsibilities and taxing powers between the Dominion and the provinces, were announced to-day by Chairman Newton W. Rowell

The Chairman released the schedule of public hearings, planned in the nine provincial capitals and Ottawa and the personnel of the group of economists retained to advise the Commission

Mr. Rowell said the Commission expected to conclude its hearings by next July 1, if given the co-operation promised. Hearings start in Winnipeg, November 29. The Commission aims to have its report in the hands of the Government by the end of 1938.

The Chairman emphasized the Commission's function is purely advisory. What further steps were taken after its report was submitted were Government responsibilities.

The Commission was not concerned with any general over-

hauling of the British North America Act, he said "Its prime purpose was to make an economic and financial study which might ultimately involve a redistribution of powers of taxation and some amendments to the B N A Act.

Recently returned from a trip on which he visited all the provincial Premiers, Mr. Rowell said "In all cases they promised co-operation with the Commission

"All provinces are preparing briefs which will be submitted to us in due course, I expect," the Chairman continued "After we left Edmonton a Resolution was passed in the Legislature there against presentation of a brief to the Commission. The Premier announced later they would proceed with the printing of the brief."

While the Aberhart Government would undoubtedly keep in view the wishes of the Alberta Legislature in this regard, the Chairman "presumed" the brief would reach the Commission "in some form so that the views of the Government will be known to the Commission."

Data from Four Sources—The Commission would gather information from four sources on the matters it was investigating from the federal and provincial governments, from "recognized public organizations" interested in some phase of the investigation, from a staff of experts conducting private investigations and studies for the Commission, and from competent witnesses it might call to appear before it.

As a preliminary to studies on taxation and a "re-examination of the economic basis of Confederation," regional wealth and income would be appraised by a group of outstanding economists under Dr. W. A. Mackintosh, head of the economics department at Queen's University, a member of the National Employment Commission and an authority on the economy of the western provinces.

His associates in various phases of that work will include D. C. MacGregor of the economics staff of the University of Toronto, Dr. Henry Laureys, dean of the School of Higher Commercial Studies, University of Montreal, and director of technical education for Quebec Province, Frank A. Knox, associate professor of economics, Queen's University; Dr. Paul LeBel, professor of l'École Supérieure du Commerce of Quebec City, and Dr. S. A. Saunders, Saint John, N. B., a recognized authority on problems of the Maritime Provinces. Additional western economists will be retained to assist Dr. Mackintosh in his work in the west.

The taxation field will be studied by Dr. W. H. Wynne, graduate of Queen's and Cambridge, who has been engaged in Toronto for the past year on a survey of Canadian taxation, by Prof. François Vezina of the School of Higher Commercial Studies, University of Montreal, who has been directing a survey of Quebec natural resources, and Carl Goldenberg, Montreal, economist of the Canadian Federation of Mayors and Municipalities and extension lecturer at McGill University. Analysis of the financial history and present financial position of government bodies in Canada will be directed by J. C. Thompson, Montreal, for 12 years provincial auditor of Alberta, and Stewart

Bates of Glasgow, Edinburgh and Harvard Universities, former secretary of the Economic Council of Nova Scotia

Governments to aid—Dominion and provincial governments have been asked to assist in compilation of federal, provincial and municipal data on a uniform basis for this study, which will include investigation of overlapping services and jurisdictions, provincial subsidies and grants, and Government debts

Dr A E Grauer, director, social science department, University of Toronto, and Prof Esdras Minville, University of Montreal, will review the field of social services' Prof Alex Corry, professor of political science, Queen's University, and formerly of the University of Saskatchewan, is surveying the growth of Government functions since Confederation

Constitutional studies for use of the Commission will be prepared by Dr Leon Mercier Goun, Montreal lawyer and professor of the faculty of commerce, University of Montreal, and Vincent C MacDonald, dean of the law school, Dalhousie University, former editor-in-chief of the Dominion Law Reports

Schedule of sittings—The Commission's planned itinerary follows: November 29, opening at Winnipeg, December 9, open at Regina, adjourning before Christmas; mid-January, sit at Ottawa to hear Dominion-wide organizations, of which 15 to 20 already have indicated their desire to make representations, first three weeks of February in the three Maritime provincial capitals, then moving to Alberta and British Columbia for March, Quebec and Ontario in April on dates not yet determined

A final sitting is planned for Ottawa, beginning June 1, at which all governments will be represented. It is hoped this sitting will be concluded by July 1

"This gives us autumn in which to do the hard work of writing the report," said Mr Rowell. "With the co-operation of all parties we hope to keep to schedule and get the report to the Government by the end of the year. We are very anxious to conclude at the earliest possible moment consistent with being thorough."

Asked if the economists' reports would be available to those appearing before the Commission, the Chairman said they would if the representations covered the same field

"We want everyone to feel they have every possible opportunity to examine everything that comes before the Commission, whether they are for it, partly for it, or against it," he said

A Constitutional Survey suggested.—On February 17,¹ the following Motion was moved by the Hon. Member for Broadview (Mr. T. L. Church)

That, in the opinion of this House, Constitutional, Parliamentary Cabinet and Law reform are long overdue in Canada

That with a view of increasing the efficiency of Parliament and of government in this country and also of considering the whole question of over-government and over-taxation and giving the people a more modern Constitution adapted to the solution of

¹ CCXI, Can. Com. Deb. 969-982.

Canada's present-day problems, a survey and study should be made either by a Select Committee of this House or by a Joint Committee of both Houses of Parliament with a view of having a report presented to both Houses of Parliament for these very necessary reforms and for legislation accordingly so as to increase the efficiency as well as the stability of Government in Canada. Any such suggestion as aforesaid to be subject to the existing rights of minorities which are not to be interfered with but preserved.

This Motion was on the Order Paper in the Sessions of 1935 and 1936 and in its terms cover, to some extent, that by the Hon Member for Rosetown-Biggar, already given.¹ The debate upon Mr Church's Motion is full of interesting matter from a constitutional point of view and well worthy of reference by the constitutional student, but space does not admit of it being analysed here. Several Members took part in the debate, including the Minister of Justice, but eventually the mover obtained leave to withdraw his Motion.

¹ Pp 193-194, *ante*.

VIII AUSTRALIA STATUTE OF WESTMINSTER

BY THE EDITOR

ON June 22¹ in the Commonwealth House of Representatives on the Motion of the Attorney-General (Rt. Hon. J. G. Menzies, K. C.), leave was given to bring in a

Bill for an Act to provide for the adoption of sections 1, 2, 3, 4, 5 and 6 of the Statute of Westminster 1931, and for other purposes,

and on the following day² the Bill was read the First Time. On August 25³ in moving the Second Reading of the Bill, the Attorney-General, when reciting the objects of the measure and reviewing the incidents which, starting with the Balfour declaration, led up to the passage of the Statute of Westminster, said, that after the War it had been found in most British Dominions there had been a substantial development in the theory which underlies Dominion self-government. He was not prepared to say that there had been a very great change in constitutional practice, because, for years before the War, actual interference with the government of any self-governing dominion was substantially unknown; but there still remained theoretically the possibility of such interference. After the War that theory changed and a state of mind developed in which it was thought that, not only in practice, but also in theory, complete independence of the self-governing dominions should be assured. The Balfour declaration referred both to the British Empire and the British Commonwealth of Nations. They both continue to exist. One sometimes used the expression "British Commonwealth of Nations" as if it had been substituted for the older term "The British Empire," but that was not so. Parts of the Empire are not included in the British Commonwealth of Nations. India and all the non-self-governing areas, such as the Crown Colonies, still remain part of the British Empire, but they are not members of the British Commonwealth of Nations. "I take the view," continued the speaker, "that Australia is part of the British Empire, but that it has a substantial status within the Empire as a member of the British Commonwealth of Nations."

One of the recommendations of the Imperial Conference of 1930 was that the Statute of Westminster should not be introduced until it had been requested and consented to by the various Dominion Parliaments, and Resolutions giving

¹ 153 Com. Parl. Deb. 192.

² *Ib.*, 250.

³ 154 *ib.*, 83-95.

such authority were passed by the Commonwealth House of Representatives on June 28 and October 27, 1931 and by their Senate on June 29 and October 28 of that year. The result was that the Statute of Westminster received the Royal Assent on December 11 following. The Attorney-General then observed that they were not then considering the wisdom of passing the Statute of Westminster itself, but the wisdom, or otherwise, of adopting certain sections of it and making them applicable to Australia. The present Bill was being introduced because it was expressly provided in the Statute of Westminster that sections 2 to 6 thereof were not to apply to Australia, New Zealand or Newfoundland unless adopted by the relevant Parliaments.

The Attorney-General then drew particular attention to the recitals of the preamble to the Statute and emphasized that such recitals were in effect to-day, whether they adopted the Statute or not. They were offered as a deliberate recital by the Parliament of the United Kingdom of what it understood to be the position of the Dominions. Therefore whatever constitutional significance attached to the preamble to the Statute was attached to it irrespective of what the Commonwealth Parliament might do. These recitals were very significant. The first was a recital of the resolutions and declarations made by the Imperial Conferences of 1926 and 1930. Then there were the recitals in regard to the Royal Style and Titles and Succession to the Throne,¹ and that no law passed by the Parliament of the United Kingdom can extend to a Dominion without its consent. The Attorney-General here remarked that he did not suggest there was legislative force in the preamble, but there was the completely binding constitutional force in it. The speaker then dealt with the operations of the sections of the Statute of Westminster it was proposed to adopt, at the same time drawing attention to section 8 of that Statute, safeguarding any amendment of the Commonwealth Constitution except in accordance with the law passed before the coming into force of the Statute of Westminster, and section 9, which provides that the Commonwealth Parliament cannot go beyond its legislative powers because of anything contained in the Statute itself, and also provides that the concurrence of the Commonwealth will not be necessary to any law of the United Kingdom touching a matter which is exclusively within the jurisdiction of the States. The position of the States is to that extent protected

¹ See also JOURNAL, Vol V, 69 n

Mr. Menzies then said:

I think that the business of devising the Balfour declaration in 1926, and the business of devising and drafting the preamble of the Statute of Westminster in 1931 were both open to very grave criticism, and I shall state in a few moments what, in my opinion, that criticism is. But whatever criticism I may feel those things are exposed to, they have been done, nobody to-day can recall the Balfour declaration of 1926, and nobody to-day can blot the Statute of Westminster from the Statute Book of the United Kingdom. These things have been done, they are purely a cold matter of fact, and for me to complain that they should not have been done, or to offer criticism of them, is simply to beat the air.¹

It is now proposed to quote from the debate.

MR. MENZIES I believe that the 1926 declaration, followed up as it was by subsequent action, was, in substance, a grave disservice. But that does not prevent me from saying that these things have been done.

MR. BEASLEY Why do you say that they are a great disservice?

MR. MENZIES I shall indicate my reasons very briefly, and, I hope, quite dispassionately—I know that honest people can disagree on this matter. In the first place the whole of this process of devising a written formula was open to the criticism that it reduced to cold legal form, and therefore to a relatively rigid form, a relationship some of the supreme value of which has always been its vagueness and elasticity. That is the first criticism. I was very much struck by a passage in an article written by a celebrated Australian scholar.

Our nation has always excelled in political artistry rather than in political science, and the artist's skill can never be reduced to formulæ.

I think that is a pretty profound truth on all matters of constitutional relationships.

The next criticism I would offer is that the process—I am talking about the 1926-30 process—emphasized the legal aspects of independence, and, therefore, tended to give far too little weight and significance to the family relationship, which is a relationship well above the law.

MR. BRENNAN. I suggest that the legal aspects were developed only after the declaration of 1926.

MR. MENZIES. I suggest not. My criticism is criticism of the whole of the 1926-31 process, and that begins and has its roots in what I would have thought was a misguided attempt in 1926 to reduce to written terms something which was a matter of the spirit and not of the letter.

My next criticism is that, to some extent, the whole process of self-assertion ignored the physical facts. It is a very fine thing to state loudly that I am politically independent—I believe in being politically independent, my difference from those acting in 1926 and 1930 simply is I do not feel it necessary to talk about my political independence; I know it is there, but for me²

¹ 154 Com Parl Deb 92

² *Ib.*, 92-93.

to go talking about political independence, talking almost provocatively at a time when my physical, my military independence, is by no means so clear, is to provoke obvious criticism and invite obvious difficulty.

My final criticism of the process I have been referring to—and I offer these criticisms in an historical sense, because I am in favour of adopting the statute—is that it tended too much to produce problems without solving them. That may seem a little cryptic, but let me explain what is in my mind. These are some of the grave questions that I submit very earnestly to the consideration of Honourable Members on both sides of the House. In the first place it produces the problem of reconciling the most favoured nation clause in foreign treaties with the whole principle of Imperial Preference. I wonder if Honourable Members clearly realize that Imperial Preference is able to exist as one of our tariff doctrines simply because other countries have agreed that we are not all to be regarded as independent nations. If they regarded all British countries as completely independent nations they would be in a position to say, "You have a treaty with us under which you are bound to give us most favoured nation treatment. *Ergo*, give us the preference you accord to New Zealand and Canada." Our answer is "Oh, no, it is true we are independent and separate nations, but there is a little qualification on that due to our common allegiance to a common Crown which justifies us in saying that, for tariff purposes, the other Dominions are not foreign and independent, but stand on a special footing in relation to ourselves."

MR BRENNAN A very good answer!

MR. MENZIES. It is a plausible answer, and we are fortunate that the world has agreed to receive our plausible answer with a degree of complaisance. I mention it, however, because, if we talk about complete independence as if we were foreign nations, there are a few problems of the kind I have just referred to, and some important ones to which we shall have to devote a lot of attention.

(Leave to continue given.)

The second problem which, I suggest, has been produced without being solved is that of how far a Dominion owing allegiance with other Dominions to a common Crown can be neutral in a war to which that common Crown is a party. I am not going to enter into a controversy about this, but I remind Honourable Members of it because, as they know very well, it is one of the live problems that might become very much more alive in less happy circumstances than those in which we live at the moment. Finally, I confess to a feeling of great doubt as to the virtue of a bold declaration, such as is found in the Balfour Declaration, that we are equal in all things, equal in all ways with, for example, Great Britain, in all matters of foreign policy, when we know perfectly well that the completely independent conduct of foreign policy by each individual member of the British Commonwealth of Nations would lead to nothing but chaos and disaster.

My leader and colleague, the Prime Minister, has just come back from the Imperial Conference at which one of the great¹

¹ *Ib.*, 93.

achievements, not yet perhaps recognized, but, nevertheless, one of great moment, has been the production of a united declaration by all members of the British Commonwealth of Nations on the question of foreign policy. I can well imagine how difficult it is to take all the various views existing in the various countries and reconcile them on a matter of foreign policy, and to my mind the moment we said in the Balfour Declaration that we were all equal with each other, all with the same authority, power and responsibility on matters of foreign policy, we created a problem, and a very real one, to which a great deal of attention will have to be given within the next ten years, the problem of translating what is at the moment very little more than a rhetorical statement into a working statement, into something which will enable us to go on as a united British Commonwealth of Nations, while at the same time giving as much force as possible to the individuality and independence of each member of that Commonwealth.

All of these criticisms I have been referring to, I want to suggest to those who are troubled about this legislation, are now too late. That is why I said I was referring to them as a matter purely of historical interest, because for better or for worse we have the Balfour Declaration and the history of 1926 and 1930, and the only question that remains is whether we are to proceed upon the footing that those are the facts, and get whatever relatively minor advantages are to be obtained by adopting the particular provisions of the Statute of Westminster to which I have referred.

MR. BLACKBURN. In what substantial respect do the sections we have been asked to adopt now alter the practice that existed for a great many years even prior to the war?

MR. MENZIES. I think they do so to a very trifling extent. In the case of two or three sections, possibly doubt is removed by a clear declaration, but in point of practice, I think the differences are negligible. That is why I said at the beginning of my speech that this post-war development has been a development of theory rather than of practice. In point of practice the real and administrative legislative independence of Australia has never been challenged since the Commonwealth was created. It did not need any new theory to tell us that.

I think, and I suggest to the House, that, having regard to these circumstances, we ought at this stage to recognize the facts, and to come into line uniformly with the other Dominions. I think that on all these matters of constitutional doctrine and practice as much uniformity as possible throughout the British world should be aimed at.

Above all things, it seems very desirable indeed that when Australia adopts the Statute of Westminster, as it unquestionably will sooner or later, it should adopt it in circumstances of friendliness, without passion and without heat.¹

* * * * *

I want to remind hon. Members that this adoption, and the whole of the constitutional process to which I have been referring,

¹ *Ib.*, 93, 94.

merely begin a series of responsibilities. We do not conclude this matter simply by saying "that is the end of that chapter" It is not the end of the book and the book is one in which we have to write.

We have now to deal with a very much more difficult problem than that of determining and asserting our own rights. We have to approach the problem of reconciling our own independence—all our own independence, national aspirations—with all the duties that attach to our membership of the British Commonwealth of Nations. That is the big problem of practical statesmanship for the future. That is the real constitutional problem for the future. We are not merely the Australian Commonwealth; we have also an association with other members of the British Commonwealth, and it is because we have that association and because the independence of every one of us is, to an extent, dependent upon the independence of the other that we are a Commonwealth of Nations, and not a mere alliance. That, I believe, is the thing we must constantly keep in mind, because, if we degenerate in the British world to being merely friendly allies, who may cast off the alliance to-morrow, our very security in the world, to say nothing of all those other intangible elements which mean so much to us, will be threatened. That, I think, is the task we approach when, by adopting this statute, we conclude this particular post-war constitutional chapter.¹

On September 1,² a Question was asked in the Senate as to whether ample time would be allowed for a full discussion of this important matter in the Senate, to which the Minister for External Affairs and Minister-in-Charge of Territories (Senator the Rt. Hon. Sir George Pearce, K.C.V.O.) answered in the affirmative.

On September 8,³ in the Commonwealth House of Representatives, the Attorney-General was asked whether the Government intended to proceed with the discussion of the Statute of Westminster Bill with a view to its enactment or whether it was proposed to shelve the Measure, to which the Attorney-General replied that he was unable to make any statement as to the order of business in the next few days.

On the following day the Leader of the Senate was asked⁴ whether the Government had received a letter from the Premier of Western Australia intimating that the State Government viewed very unfavourably, and is opposed to, the Bill for the adoption by the Commonwealth Parliament of the Statute of Westminster; if so, would he give full consideration to the representations contained in the letter before proceeding further with the measure? The Minister for External Affairs replied that the Government had received the

¹ 154 Com. Parl. Deb 94-95 ² *Ib.*, 345. ³ *Ib.*, 730. ⁴ *Ib.*, 788, 789.

letter referred to, and, of course, would give full consideration to the representations contained in it

The following Question and Supplementary Question were asked on the same day¹ in the Commonwealth House of Representatives

MR HAWKER Will the Prime Minister indicate whether the Government has received any representations from the States on the subject of the Statute of Westminster? More particularly, has any notification been received which would confirm the published expression of opinion by the Labour Premier of Western Australia, that while the present arrangement was working satisfactorily in every way, it seemed a great pity to introduce rigidity, with a possibility of danger arising from friction and trouble in the future?

THE PRIME MINISTER (Rt Hon. J. A. Lyons, C.H.) A communication has recently been received from Western Australia, and previously there were some communications from other States. I shall look into the matter and inform the Honourable Member of the attitude of the States

MR PROWSE With reference to the Bill to ratify the Statute of Westminster, has the Prime Minister seen in newspapers published in Western Australia a statement by the Premier of that State that he considers that Australia would be better off under the bonds that bind us at present, and has the right honourable gentleman received any communication from the Government of Western Australia on the subject?

MR LYONS I have not seen the published statement of the Premier of Western Australia, to which the Honourable Member has referred. In reply to the Honourable Member for Wakefield, I have already answered a question similar to that contained in the second part of the Honourable Member's question.

On September 15² the Prime Minister of the Commonwealth then gave his promised reply, as follows. On September 9, the honourable Members for Wakefield (Mr Hawker) and Forrest (Mr Prowse) asked me questions, *without notice*, regarding representations received from the Governments of the States on the subject of the Statute of Westminster. I am now in a position to supply the honourable Members with the following summary of the views expressed by the State Governments in the matter:

New South Wales —The Premier of New South Wales (under date September 10, 1937) reiterated a suggestion previously made by him that in the proposed adopting Bill there should be inserted a recital and declaratory clause asserting that the constitutional position was that it would not be proper for the Commonwealth, without the concurrence of a State, to request

¹ *Ib.*, 839.

² *Ib.*, 1152

or consent to any amendment of the Statute of Westminster affecting the legislative powers of the State

Victoria.—The Government of Victoria has expressed a desire for the insertion of a declaratory clause similar to that sought by New South Wales

Queensland.—The State of Queensland has associated itself with the desire expressed by the State of Victoria

South Australia.—The State of South Australia has not yet indicated an attitude, either in favour of, or opposed to, the measure.

Western Australia.—In a communication dated August 31, 1937, the Premier of Western Australia states that, in the light of the legal advice received and the consideration which has been given to the matter, his Government holds the opinion that it would be preferable to allow the relationship between the United Kingdom and the Commonwealth of Australia to be left to flexible constitutional understandings as at present rather than to attempt to define their relationship in legal form by the adoption of sections 2 to 6 of the Statute of Westminster, which that State considers will inevitably give rise to doubts, fears and uncertainties concerning the effect of such adoption upon the States of the Commonwealth. The Premier states that his Government is opposed to the measure

Tasmania.—The Government of Tasmania has indicated that it is in favour of the adoption by the Parliament of the Commonwealth of sections 2 to 6 inclusive of the Statute of Westminster.

IX. PRECEDENTS AND UNUSUAL POINTS OF
PROCEDURE IN THE UNION HOUSE
OF ASSEMBLY, 1937

BY

D. H. VISSER, J P

• (*Clerk of the House of Assembly*)

THE following points of procedure occurred in the House of Assembly during the 1937 Session.

Rule of Anticipation—On the opening day of the Session the Minister of the Interior gave notice of a Motion to introduce a Bill to restrict the immigration of aliens and was followed by the Leader of the Opposition, who gave notice of a Motion of censure on the Government for neglecting in the past to take adequate measures in dealing with aliens. As the Bill dealt with future immigration and the Motion of censure dealt with the attitude of the Government in the past, the Motion was allowed, but Mr Speaker pointed out that had it not been a Motion of censure, it might have been necessary to rule a discussion out of order as anticipating a debate on the Bill ¹

Consideration of Assembly Bill by Joint Committee—After the Native Laws Amendment Bill² had been introduced in the House of Assembly, and read a First Time, it was proposed to refer to it a Joint Select Committee. It was realized, however, that it would be impracticable to refer an Assembly Bill to a Joint Committee which would report it to both Houses. The order for the Second Reading of the Bill was therefore discharged and after the Bill had been withdrawn a Joint Committee was appointed to consider the subjects specified in the title. The Joint Committee subsequently brought up a Report containing the draft of a revised Bill and this Bill³ was introduced by the Minister of Native Affairs, and passed in the usual way ⁴

Amendment of "Words of Enactment."—Before His Majesty King Edward the Eighth's Abdication Bill⁵ was read a Second Time it was noticed that the customary words of enactment "Be it enacted by the King's Most Excellent Majesty," etc. had been altered to "Be it declared and enacted by His Majesty

¹ VOTES, 1937, 27

⁴ VOTES, 1937, 98, 514.

² Act No 46 of 1937

⁵ See also JOURNAL, Vol V, 70-72.

³ A.B 63—'37.

the King," etc. This departure from the customary formula was considered to be unnecessary, but as Standing Order No 164 provided that the enacting words should not be put in Committee, there was no opportunity for altering them. Mr. Speaker therefore suggested that in this case the enacting words should be put when the House went into Committee. The House ordered accordingly, and the customary formula was subsequently adopted in Committee.¹

Control of Expenditure by House of Assembly—The Select Committee on Railways and Harbours² drew attention in a special report to the fact that gratuities to railway servants and *ex gratia* payments continue to be made without the prior consent of Parliament. The Report was printed in the Votes and Proceedings and set down for consideration on a future day, but as in 1936 when the Committee made a similar report the Order dropped owing to prorogation.³

Delegation of Question to body of persons unconnected with Parliament—The principle laid down by Mr. Speaker Krige in 1922 and 1923⁴ that it is irregular for the House to delegate a question to a body of persons unconnected with Parliament was applied on an amendment to a motion for the appointment of a Select Committee to enquire into the price of wheat. The amendment proposed that the subject should be enquired into by the Board of Trade and Industries, but, with the consent of the mover, it was altered at the Table into a superseding amendment recommending that the Government should cause an enquiry to be made by the Board of Trade and Industries.⁵

Translation of Bills—Section 137 of the South Africa Act provides that "all Bills . . . shall be in both [official] languages" On February 16,⁶ a Member drew attention to the fact that the amendments proposed in the Transvaal Asiatic Land Bill⁷ were printed in Dutch but not in English. The Bill proposed to insert provisions in a law of the Transvaal⁸ of which Dutch was the only official version, and Mr. Speaker stated that under these circumstances the practice was to employ the language of the official version.⁹

¹ VOTES, 1937, 132, 150

² VOTES, 1937, 168

³ *Ib.*, 1937, 188.

⁴ A B 40—37

⁵ A Department of State,

⁶ VOTES, 1922, 688, *ib.*, 1923, 366

⁷ VOTES, 1937, 280

⁸ Law, No 3 of 1885

⁹ In this instance the Dutch provisions proposed to be inserted were preceded by the words "Section three of Law No 3 of 1885 of the Transvaal is hereby repealed and the following sections substituted therefor" For the convenience of Members and the public generally it is suggested that under similar circumstances in future a translation of the provisions might

Use by Members of information gained in Select Committees.—

On February 22, the Chairman of the Select Committee on Public Accounts drew the attention of the Clerk of the House to a Question on the Notice Paper which he stated was framed on information recently elicited by the Select Committee. On the Member being informed that it was contrary to the practice of the House to make use of such information before the Committee had reported, he agreed to withdraw the question.¹ Subsequently the Question was again placed on the Notice Paper, but before it was reached the Chairman of the Select Committee on Public Accounts drew attention to it and asked for Mr Speaker's ruling as to whether the Question could be asked before the Committee had reported. Mr. Speaker stated that information gained at the proceedings of a Select Committee should not be published or used for the purpose of debate or of asking Questions until the report of the Committee had been printed by order of the House, but allowed the Question in this instance as it had been printed and a Minister was prepared to answer it.²

Charges against Members

(1.) *Contracts*—On March 3, the hon Member for Illovo (Mr J. S. Marwick) proposed to give notice of a Motion for the appointment of a judicial commission to enquire *inter alia* into a letter from the Hon F. C. Sturrock (Minister without Portfolio) to one of his business managers stating that Colonel D. Reitz (Minister of Agriculture and Forestry) had shown him in strict confidence the list of tenders for tents to be supplied to the National Park and furnishing the lowest price on the list. At the request of the Prime Minister the House agreed to dispense with the notice and, after Colonel Reitz and Mr Sturrock had been heard in their places, agreed to the Motion. On March 8, it was announced that a judicial commission consisting of Mr Justice Centlivres, Advocate R. R. B. Howes, K.C., and Mr. St. John Cole-Bowen had been appointed. On April 23, the Commission reported that the letter from Mr Sturrock had been written before Mr. Sturrock and Colonel Reitz were Ministers and that there was no impropriety in the conduct of either of them.³

be made, preceded by words such as "Section three of Law No. 3 of 1885 of the Transvaal is hereby repealed and the sections, of which the following is a translation, substituted therefor." This wording would be in accordance with the practice followed in Bills containing documents, such as agreements, of which there is only one official version.

¹ VOTES, 1937, 318, 324

² *Ib*, 369-370.

³ VOTES, 1937, 383, 410, 705

(ii.) *Personal honour* —On March 30, in the course of a speech, Mr. L. J. Steytler, the hon. Member for Albert, made certain allegations as to speculations in wheat by the hon. Member for Wodehouse (Mr. S. Bekker), when a director of a farmers' co-operative society known as "Sasko." These allegations were not regarded by Mr. Speaker at the time as reflecting on Mr. Bekker's personal honour. Mr. Bekker, however, took a serious view of the allegations, which he regarded as amounting to a charge of fraud. On April 2, he accordingly moved for the appointment of a Select Committee, consisting of five members to be nominated by Mr. Speaker, to investigate the charge that "when a director of Sasko he speculated in wheat belonging to Sasko and kept the profits which should have been paid to the farmers." The Motion was agreed to, and on April 21 the Committee reported that on the date of the transaction referred to Mr. Bekker had ceased to be a member of Sasko and that the allegation was therefore devoid of foundation.¹

(iii.) *Procedure of Select Committee* —During the sittings of the Select Committee on the charge against Mr. S. Bekker referred to above, both Mr. Bekker and Mr. Steytler exercised their right as Members of the House of being present while witnesses were being examined. At an early stage of the proceedings Mr. Bekker applied to the Committee for leave to examine witnesses through the Chairman and the question arose as to whether the Committee had the power to grant the application. In 1932 the Committee on the case of Mr. Munnik granted a similar application by Mr. Munnik without leave of the House,² but when Select Committees have been appointed to enquire into matters in which the character of conduct of Members is concerned the Committees have been empowered by order of the House to hear counsel on their behalf,³ and in this case it was decided to report specially to the House recommending that "leave be granted to Mr. S. Bekker and Mr. Steytler to appear before the Select Committee personally and examine witnesses through the Chairman." Subsequently it was found unnecessary for either of the Members to examine witnesses and the report was not brought up.⁴

Motion censuring conduct of public servant —On February 2, a Member ascertained by means of a question that Dr. H. D. J. Bodenstein (Secretary to the Prime Minister and Secretary

¹ *Ib.*, 575, 592 and S.C. 16—'37

² May, 11th ed. 414

³ S.C. 18—'32, p. x

⁴ S.C. 16—'37, xvii.

for External Affairs) had, with the consent of the Prime Minister, contributed an article on the "divisibility of the Crown" to a German periodical. On March 4, the Prime Minister laid a copy of the article on the Table of the House and on the following day the hon. Member for Turffontein (Colonel C. R. Stallard, K.C., D.S.O., M.C.) moved in general terms that in the opinion of the House the publication of the article expressing Dr. Bodenstein's personal views "on a current political question affecting the domestic and external relations of the Union, which is a matter of controversy, is incompatible with the duty of a public servant." After an amendment had been moved which sought to place the responsibility for the publication of the article on the Prime Minister, the debate was adjourned and the order for its resumption was discharged towards the end of the Session.¹

Executive matters—The constitutional principle that the House has the right to enquire into and control the acts of the Executive Government without directly interfering with the details of administration was again exemplified by the proceedings on the petition of S. J. Gillmor. Mr. Gillmor, an official in the Department of Posts and Telegraphs, availed himself of the proviso to section 20 (1) (g) of Act No. 27 of 1923 to petition the House for the redress of a grievance in connection with the adjustment of his salary, and the Select Committee to which the petition was referred explicitly refrained from making any recommendation which would directly interfere with the details of administration.²

Motions of censure on Chairman and Deputy-Chairman—On February 19, the hon. Member for Benoni, the Hon. W. B. Madeley (Leader of the Labour Party), being under the impression that the Chairman of Committees had invited a Member to move the closure, gave notice of a Motion of censure. The Motion was given precedence for the next sitting day, but, on being called upon to move it, Mr. Madeley stated that he did not propose to do so as he found there had been a misunderstanding.³

On April 27, the hon. Member for Winburg, Dr. N. J. van der Merwe, gave notice of a Motion disapproving of the action of the Deputy-Chairman of Committees in accepting a Motion for the application of the closure. The Motion was given precedence on the following day when a superseding amendment approving of the Deputy-Chairman's action and placing on record "the necessity for upholding the authority of the Chair

¹ VOTES, 1937, 403.

² S.C. 17—'37

³ VOTES, 1937, 308.

and supporting the presiding officer in the discharge of his difficult duties" was adopted ¹

Suspension of rules for expedition of Business.—Towards the close of the Session the Acting Prime Minister gave notice of a Motion for the suspension of S O 51 (Motions without Notice) and S.O. 159 (Stages of Bills) in their application to certain specified measures. On being called upon to move the Motion, however, he stated that it would not be necessary to do so as arrangements had been made by the party whips which would bring the work of the Session to a conclusion as soon as possible.²

Refusal of Railway Administration to furnish papers ordered by a Select Committee—During the sittings of the Select Committee on Pensions a case arose similar to that known as the "McTaggart case"³ Owing to the refusal of the Railway Administration to furnish papers dealing with disciplinary action taken by the Administration against G W Golding (a petitioner), the Select Committee adjourned *sine die*. Mr. Speaker, however, ruled that the Resolution was irregular and informed the Committee that if it considered that the papers required were relevant and necessary to its enquiry it could formally order their production and the Clerk of the House would thereupon notify the Department concerned. Mr. Speaker added that in the event of the Department refusing to produce the papers it would then be competent for the Committee specially to report the circumstances to the House for its decision under section 20⁴ of the Powers and Privileges of Parliament Act ⁵ The papers were then formally ordered, but subsequently the General Manager of Railways informed the Clerk by letter that acting on instructions from the Minister he was unable to comply with the request of the Committee as it was not considered in the public interest to disclose the documents and no further action was taken.⁶

¹ *Ib*, 745

² *Ib*, 886, 889.

³ VOTES, 1927-28, 429, 844, Union Assem. Deb. 1927-28, 3952-3991, 4418

⁴ *Objections to answer questions or to produce papers to be reported to Parliament for decision* 20 If any person ordered to attend or produce any paper, book, record, or document before Parliament or any Committee refuse to answer any question that may be put to him or to produce any such paper, book, record, or document on the ground that the same is of a private nature and does not affect the subject of inquiry, the President, the Speaker, or the Chairman of the Committee (as the case may be), may report such refusal with the reasons therefor, and the House may thereupon excuse the answering of such question or the production of such paper, book, record, or document, or may order the answering or production thereof

⁵ Act No. 19 of 1911

⁶ Annexure No. 808, '37, pp. 55, 57 and 67.

Presence of strangers at, Select Committees.—On March 1, the Select Committee on the subject of the Provincial Legislative Powers Extension Bill and of the Transvaal Asiatic Land Bill declined to accede to a request from the Secretary to the Agent-General for India for leave to be present during the sittings of the Committee. On March 5, a further application for leave to be present on specified occasions was also refused. The Secretary to the Agent-General for India then asked to be supplied with copies of evidence given in order to enable him to prepare rebutting evidence and the question arose as to whether this course was permissible under S.O. 239.¹ Mr. Speaker ruled that it was competent for the Committee either to permit strangers to be present in person to hear evidence or to supply them with copies of the evidence given, but the Committee declined to accede to the request.²

Failure of Select Committee to report on matter referred—The subjects of two Bills, namely, the Provincial Legislative Powers Extension Bill and the Transvaal Asiatic Land Bill, were referred to a Select Committee with an instruction to bring up a Report within a certain period. This period was subsequently extended, but on April 5 the Committee having dealt with the first Bill reported that it would be unable to complete its deliberations on the second Bill without a further extension of time. This Report was not considered by the House and as the Committee had adjourned *sine die* it did not meet again.³

Scope of Enquiry of Select Committee on Bills referred before Second Reading—The subject of two Bills was referred to a Select Committee before Second Reading, namely the Provincial Legislative Powers Extension Bill and the Transvaal Asiatic Land Bill. As the former dealt only with the employment of Europeans by non-Europeans and the latter with ownership by Asiatics of properties in the Transvaal, the Chairman considered that evidence on the segregation of

¹ Namely:—

Proceedings not to be published before printed by House 239 The proceedings of, or evidence taken by, or the report of any Select Committee, or a summary of such proceedings, evidence, or report, shall not be published by any member of such committee, or by any other person, until the report of such committee has been printed by order of this House. Provided, however, that the evidence given before, or any papers forming part of the records of, such committee may, with the approval of Mr. Speaker, be printed for the exclusive use of the committee (1912, amended, August 14, 1924)

² S.C. 11—'37, VII-VIII and XI-XII

³ S.C. 11—'37, VOTES, 1937, 581

Asiatics in Natal was outside the scope of the Committee's enquiry Mr Speaker, however, ruled that as the Bills were referred to Select Committee before Second Reading it was competent for the Committee to take evidence on this subject¹

Joint sittings and validity of Acts of Parliament—In an Article (V) in the last issue of the JOURNAL² reference was made to the competency of the two Houses of the Union Parliament, sitting jointly or separately, to deal with certain matters, and the case of Ndlwana (Appellant) v. the Minister of the Interior and others (Respondents), on which an appeal was pending, was quoted. The appeal was heard on March 23, and on April 5 (1937) the following full judgment was handed to the Registrar of the Appellate Division of the Supreme Court of the Union:

JUDGMENT:

STRATFORD, A C J

The present Appellant made an application to the Cape Provincial Division for an Interdict restraining the Respondents from (1) including his name in the Cape Native Voters' roll and (2) removing his name from the voters' list in which it now appears. Act 12 of 1936, styled "To make special provision for the representation of natives in Parliament and in the provincial council of the Province of the Cape of Good Hope and to that end to amend the law in force in that province relating to the registration of natives as voters for Parliament or a provincial council, to establish a Natives Representative Council for the Union, and to provide for other incidental matters," provides for such inclusion and removal and the application was founded on the contention that this Act was *ultra vires* the South Africa Act because it was passed by a joint sitting of both Houses of Parliament and was not a law which fell within the provisions of section 35 (1) of that Act. There was an alternative contention attacking the validity of the Act on the ground that the joint sitting of the two Houses at which this Act 12 of 1936 was passed was not duly convened to consider this Act but another Bill which was neither proceeded with nor withdrawn. This latter contention was not urged before this Court and in any event in the view we take of the matter need not be considered. The Cape Provincial Division after a careful consideration of all the arguments advanced and of the provision of the Act assailed dismissed the application. Hence this appeal. On the hearing of the Appeal the Court requested Mr. Buchanan to deal with the preliminary question whether this Court had any power at the present time to pronounce upon the validity of an Act of Parliament duly promulgated and printed and published by proper authority, in as much as Parliament is now, since the passing of the Statute of Westminster, the supreme and sovereign law making body in the Union. Parliament has moreover, in

¹ S C. 11—'37, xvi, xviii.

² Pp. 86-89.

the Status Act of 1934, defined its own powers and declared them to be "sovereign"

In effect, and putting his argument in its most plausible form, Mr Buchanan meets the question put to him by contending that Act 12 of 1936 was not an Act of Parliament. Parliament, he said, consisted of the three constituent elements mentioned in the South Africa Act, viz the King, a Senate, and a House of Assembly, and that these constituents had not functioned. This raised the question as to the proof of an Act of Parliament before a Court of Law. An Act of Parliament, in the case of a Sovereign law-making body, proves itself by the mere production of the printed form published by proper authority (See Halsbury, vol 13, p 525). We can disregard such fanciful and unusual objections as that the printed Act does not correspond with the original signed by the Governor-General or that it is a forgery. Those highly unlikely objections if urged could be immediately set at rest by the production of the original. We are not concerned with averments of that nature since it is admitted that the printed Act corresponds with the original.

Parliament's will therefore as expressed in an Act of Parliament cannot now in this country, as it cannot in England, be questioned by a Court of Law whose function it is to enforce that will not to question it. In the case of subordinate legislative bodies Courts can of course be invoked to see that a particular enactment does not exceed the limited powers conferred. It is obviously senseless to speak of an Act of a sovereign law-making body as *ultra vires*. There can be no exceeding of power when that power is limitless.

Mr Buchanan, somewhat hesitatingly, it is true, questioned the sovereignty of the Union Parliament. He said that the Statute of Westminster by removing the fetters upon the legislative powers of the Union Parliament did not confer sovereignty, that the power conferred rested upon a Statute of Great Britain and could therefore be revoked by a similar Statute. We cannot take this argument seriously. Freedom once conferred cannot be revoked. He also urged, in the alternative, that so long as the Union Parliament did not repeal the South Africa Act its provisions remained operative and had to be observed by Parliament whenever it purported to function. On this hypothesis he proceeded to urge that the implication of the South Africa Act was that the constituent elements of Parliament should act separately, the implication getting additional force from the special provisions of sections 35 and 152 where in the cases there mentioned it was allowable to act jointly. He then met the proof of the Act by its production by stating that *ex facie* the document before us was not an Act of Parliament in as much as by its reference to the provisions of section 35 of the South Africa Act it was admittedly passed by the two Houses sitting together and not bicamerally. Now assuming that we are entitled to infer from its reference to the two provisions of section 35 that Act 12 of 1936 was passed by the two Houses sitting together and not bicamerally, the question then is whether a Court of Law can declare that a Sovereign Parliament cannot

validly pronounce its will unless it adopts a certain procedure—in this case a procedure impliedly indicated as usual in the South Africa Act?

The answer is that Parliament, composed of its three constituent elements, can adopt any procedure. It thinks fit, the procedure express or implied in the South Africa Act is so far as Courts of Law are concerned at the mercy of Parliament like everything else.

I would just observe that this is not a case where one of the constituent elements of Parliament has not functioned. The contrary is clearly to be inferred from the Royal Assent and promulgation. A Resolution of one of the Houses of Parliament is an example of such a case. It is not an Act of Parliament (See Dicey *The Law of the Constitution*, 4th ed., p. 52, where the subject is discussed) and a Court of Law would not enforce it.

It is not necessary to refer to the case of *Rex vs. N'Debe*, since that case was decided before the Statute of Westminster. The conclusion then is that the validity of Act 12 of 1936 cannot be questioned in a Court of Law and the Appeal must, therefore, be dismissed with costs.

It is hardly necessary to point out the far-reaching consequences of this decision. It sets at rest the question often raised in the House and elsewhere as to whether the validity of an Act of the Union Parliament can be questioned in a Court of Law, but in doing so it raised fresh issues.

It may now be maintained that the Union Parliament is no longer bound by its own Constitution any more than it is bound by its own Standing Rules. In other words that its Constitution is now as flexible as that of Great Britain. It seems clear that the House will now be able to waive its own financial privileges in certain cases without the amendment to section 60 of the South Africa Act,¹ but I think it may be assumed that the House will not radically depart from the procedure enjoined by the South Africa Act without first amending the Act itself.²

¹ In the course of a ruling on the *Native Disputes Bill*, 1912, which originated in the Senate and contained taxation proposals Mr. Speaker Molteno said: "I am unable to recommend that the House of Assembly should waive its privileges in this matter, indeed, I scarcely think it has the power to do so" (*V. and P.* 1912, p. 290).

² This important Judgment has placed in doubt the question whether the Union Parliament is the only and final authority to determine if legislation affecting the entrenched sections of the South Africa Act, 1909—*i.e.*, Section 33 (number of Members of the House of Assembly), section 35 (Qualification of voters), section 137 (Equality of languages), and section 152 (Amendment of the Constitution)—should be subjected to the special procedure prescribed for a Joint Session of the Two Houses or whether it should be proceeded with in the ordinary manner.—ED

X APPLICATIONS OF PRIVILEGE, 1937

COMPILED BY THE EDITOR

Westminster.

Access of Members to the House—On November 25,¹ in the House of Commons, the Member for Carlisle (Brigadier-General E. L. Spears, C B., C B E., M C) asked the Home Secretary whether he was aware that the Sessional Order² relating to the access of Members to the House was not being complied with by the police; and whether he would instruct the Police Commissioner that this order must be observed and that upon State occasions, such as the opening of Parliament and the visit of the King of the Belgians, Members of the House must not be treated merely as members of the public but be given access to the House by the shortest available route in so far as this was possible without interfering with processional arrangements?

To this the Secretary of State for the Home Department (Rt Hon Samuel Hoare, Bart., G C S I., etc) replied that the importance of complying with the Sessional Order was fully appreciated by all members of the Metropolitan Police, who had standing instructions to give all possible facilities in the neighbourhood of the Palace of Westminster to Peers and hon. Members who, on approaching or leaving the House, disclose their identity. On ceremonial and similar occasions special care was taken to secure the free access of hon. Members up to the latest possible moment, but his hon. Friend would appreciate that on such occasions special traffic arrangements have to be made, often requiring that certain streets be temporarily reserved for traffic going only in one direction.

The hon. Member for Carlisle, however, while thanking the Minister for his answer, appealed to Mr. Speaker on a question of Privilege, who said, that if the hon. and gallant Member desired to raise a question of Privilege he must do so at the end of questions, which the hon. Member duly did, when Mr. Speaker said.³

¹ 329 H.C. Deb. 5 s. 1390, 1391

² Metropolitan Police—*Ordered*, That the Commissioner of Police of the metropolis do take care that during the session of parliament the passages through the streets leading to this House be kept free and open and that no obstruction be permitted to hinder the passage of members to and from this House, and that no disorder be allowed in Westminster Hall, or in the passages leading to this House, during the sitting of parliament and that there be no annoyance therein or thereabouts and that the serjeant-at-arms attending this House do communicate this order to the Commissioner aforesaid (November 21, 1933)

³ *Ib.*, 1417 to 1419.

" I do not think that any question of Privilege arises. Since the question of the hon. and gallant Member for Carlisle appeared on the Paper, I have taken the opportunity of consulting the Rulings of some of my predecessors. I notice that one of them, Mr. Speaker Gully, said—and I agree with what he said—that great care should be taken that the Sessional Order should be duly enforced and that the access of Members to the House should be secured. I think I express the view of the House generally when I say that the Sessional Order is duly carried out, and that the police perform their duties to the satisfaction of Members. I note, however, that Mr. Speaker Gully in his Ruling, used the words

‘ near the House.’

I think it has always been held that in the Sessional Order the words

‘ passages through the streets leading to this House be kept free and open ’

refer to the neighbourhood of the House, and not to streets remote or at any indefinite distance from the House. Traffic has certainly not become easier, and such an interpretation of the Order would be impossible to carry out. I may add that by arrangement with the Commissioner of Police, Members will be informed in future of any traffic diversions which are necessary on important ceremonial occasions and which might interfere with their access to the House during the Session."

The hon. Member for Carlisle: " I thank you very much indeed, Mr. Speaker."

South Australia.

Reflections upon Parliament.—In the House of Assembly of the Parliament of the State of South Australia, on September 7, an hon. Member (Mr. Hamilton) asked Mr. Speaker if his attention had been drawn to very damaging statements in *The Advertiser*¹ of that day alleged to have been uttered by the Rev. W. G. Clarke? " I do not propose to repeat the state-

¹ MINISTER'S ATTACK ON STATE'S SOCIAL POLICY.

BRISBANE,
September 6

Speaking at the official dinner tonight given by the Queensland Temperance League to visiting delegates to the All-Australian Temperance Convention, the Rev. W. G. Clarke, of Adelaide, said that the South Australian Parliament was the " wettest," and, from the standpoint of moral

ments In view of the nature of the statements, do you, as Speaker of this House, propose to take steps to maintain the honour of this Chamber?"

Mr Speaker: I have seen the published report of the Rev W G. Clarke's statements, and if he has been correctly reported they are a grave reflection on the Parliament of this State. In my opinion the statements are not correct, and as such unfounded implications damage the reputation and integrity of this Parliament, and the public life of this State, I take the opportunity to depiccate and refute the unqualified expressions

On October 14, the following Question was put to Mr. Speaker:

Mr Dunks: On September 7, Mr Speaker, you were asked by the hon Member for East Torrens, Mr. Hamilton, whether your attention had been drawn to a very damaging statement, published in *The Advertiser* that morning regarding this Parliament, which was alleged to have been uttered by the Rev W G. Clarke. Have you received any correspondence or apology from Mr Clarke since his return to South Australia?

Mr Speaker On his return to Adelaide the Rev W. G. Clarke wrote me a letter in which he stated that the correct interpretation of his remarks would be that it was not his intention to reflect upon members personally, but his remarks were only in regard to legislation which had been passed by this Parliament.

and social legislation, perhaps the worst that South Australia had ever had or was likely to have

He did not say that there were no staunch temperance men in the South Australian Parliament, but the majority of the legislators had been willing to be dedicated to the evil to an extent that would make them in future unwept, unhonoured, and unsung The betting shops were the foulest blot on South Australia Far from reducing betting, they were an encouragement to it

XI. SOME RULINGS BY THE SPEAKER AND HIS DEPUTY AT WESTMINSTER, 1937

COMPILED BY THE EDITOR

THE following Index to some points of Parliamentary Procedure as well as Rulings by the Speaker and Deputy-Speaker of the House of Commons given during the Second Session of the Thirty-seventh Parliament of the United Kingdom of Great Britain and Northern Ireland and the First of His Majesty King Edward VIII and later of His Majesty King George VI, are taken from the General Index to Volumes 317 to 327 of the House of Commons Debates (Official Report), 5th series, comprising the period 3rd November, 1936, to 22nd October, 1937. The Rulings, etc., given during the remainder of 1936 and falling within the Third Session of the Thirty-seventh Parliament will be treated in Volume VII of the JOURNAL.

The respective volume and column reference number is given against each item, thus—" (283 - 945) " or " (284 - 607, 608 and 1160). " The items marked with an asterisk are indexed in the Commons *Hansard* only under the heading " Parliamentary Procedure. "

Note.—1 *R.*, 2 *R.*, 3 *R.* = Bills read First, Second or Third Time. *Amdt(s).* = Amendments. *Com* = Committee. *Cons* = Consideration. *Rep.* = Report. *C.W.H.* = Committee of the Whole House. *Q* = Questions to Ministers. *Sel. Com.* = Select Committee. *R.A.* = Royal Assent.

Address-in-Reply.

—Selection of *amds* to, matter for Mr Speaker (317 - 257, 258).

Adjournment.

—of debate.

—for purpose of Ministers making a statement (326 - 1194)

—not allowed, considered an abuse of the Rules of the House (326 - 727).

—of House.

—cannot be moved on question for 3 *R.* (326 - 1193, 1194).

—irrelevance (318 - 2730); (324 - 997, 982, 984).

—lapsed under 11 o'clock rule (318 - 2780)

Adjournment.

- of house (*continued*):
 - legislation not debatable on (324 - 967, 972, 981).
 - precedence of Member, on motion for (326 - 1763)
 - subject not raised on (321 - 939).
- of House (urgency),
 - motion not allowed (322 - 1187 to 1189); (323 - 35, 36, 349)
 - request for leave to move, motion stood over until 7 30 under S.C. 8 (317 - 880), (326 - 1491).

Amendment(s).

- *—cannot be withdrawn if Member speaks (318 - 164); (323 - 581), (326 - 592)
- manuscript (321 - 83, 84)
- moving *amdt* to, of substituting words (326 - 2335 to 2337)
- “privilege” (monetary) in Commons (326 - 1401, 1402, 1403).
- selected—*see* Mr Speaker
- time for moving, to proposed *amdt* (318 - 1744, 1745).
- to Address-in-Reply, selection of, a matter for Mr Speaker (317 - 257, 258)
- unselected, Member allowed explanation (318 - 1693, 1694).

See also Bills, and Lords' Amendments.

Bills, Private.

- objection to 2 R. (321 - 2076, 2077)

Bills, Public.

- ballot for, (317 - 80).
- debate
- instructions } *See* those Headings.
- introduction in House of Lords (324 - 837).
- 2 R
 - amdt* outside Bill (318 - 1465)
 - Expiring Laws Ordinance Bills, not discussed on (317 - 1053, 1579, 1580)
- C.W.H.
- amdt.*
 - too late (318 - 2231)

Bills, Public (*continued*).—*Cons*—*amdt.*

- formally moved (322 - 1277).
- cancellation of Order for, on certain date (324 - 276, 277).
- consequential (325 - 408, 469).
- inconsistent (326 - 1647, 1648).
- irrelevance (325 - 615)
- new clause not in order (321 & 95).
- no voting on Question "That clause stand part of the Bill" (323 - 921)
- Question "That Clause as amended stand part of the Bill" not put on *Cons.* of Bill from Standing *Com* (323 - 921)
- repetition (325 - 657)
- selected (326 - 1374, 1375).
- to proposed *amdt* cannot be moved until main *amdt* proposed (326 - 1536).
- when considered moved (326 - 1175)
- Report stage passed (326 - 1191).
- 3 *R.*
 - adjournment of House cannot be moved on question for (326 - 1193)
 - adjournment of debate cannot be moved until question for 3 *R.* proposed (326 - 1194).
- must be awaited (317 - 1030).
- opposition to,
 - method (324 - 276, 277).
 - point cannot be raised now (324 - 250)
- *—Private, Bill (318 - 782); (325 - 1759, 1760).
- withdrawal,
 - cannot be effected after Bill negatived (319 - 2011).
 - of, refused (320 - 1598)

Business of the House.

- arrangement of, not a matter for Mr. Speaker (323 - 540).
- Expiring Laws Continuance Bill not debated on 2 *R.* (317 - 1053, 1579, 1580).
- 7.30 interruption of, for Private Business (S O. 6) effect upon Member's speech (322 - 257)

Calling of the House.

- before date appointed, procedure (326 - 3531), (326 - 2412).

Chair.

- absence of Minister not matter for (326 - 404).
- calling of a Member is within the discretion of (318 - 782); (326 - 2327)
- *—conduct of, cannot be discussed (322 - 2122).
- duty of, to protect Ministers as well as other hon Members (326 - 1490).
- Member always at liberty to put a Point of Order to (320 - 2418).
- must address (317 - 1003).
- selection of *amds* rests with (326 - 1375).
- “ You ” means the (317 - 433)
- See also* Mr Speaker and Chairman.

Chairman.

- *—matters of taste, not to judge on (324 - 383).
- *—motion, “ That the, do now leave the Chair,” non-acceptance (322 - 2119 to 2122)

Christmas and New Year's Wishes (318 - 2892).**Clerk of the House of Commons.**

- retirement of Sir Horace Dawkins (326 - 3493, 3494); (327 - 37 to 40).

Closure.

- accepted (318 - 806)
- *—cannot be discussed (322 - 2118)

Debate.

- Address-in-Reply.
 - anything said by His Majesty not to be quoted to influence (317 - 71).
 - irrelevance (317 - 790)
- Address on
 - motion for, on Orders-in-Council, several taken together (317 - 1159, 1172, 1548), (325 - 1738, 1741, 1742).
- adjournment of—*see* that heading.
- amdt.*
 - debate upon an, cannot be anticipated (324 - 1212).
 - discussion of an unselected, not allowed (322 - 1370).
 - terms of, must be kept to (318 - 1742).

Debate (*continued*).

—“ Another Place.”

—debate in.

—must not be quoted (326 - 3481)

—must not be quoted too literally (326 - 2613)

—reference to, permissible when an official statement of Government policy (326 - 3215).

—quoting speeches made in (322 - 573), (326 - 2613).

—reference to statements in (326 - 2315).

—apology by Minister to representative of a Foreign Power for statement made by a Member (317 - 260, 261).

—asking *Q* during (319 - 1953)

—Bill(s).

—2 *R*

—interruptions not allowed (318 - 781)

—cannot discuss provisions of main Bill on (226 - 1132).

—Expiring Laws Continuance Bill, not discussed on (317 - 1053)

—irrelevance (322 - 540), (319 - 1177), (320 - 249), (321 - 457).

—merits of, not discussed on (326 - 1108)

—*C.W.H.*

*—2 *R.* speech (318 - 871).

—*Rep.*

—after committal of Bill to Standing *Com*, Rule as to speaking more than once (325 - 701).

—*Cons.*

—Committee, not allowed on (318 - 1697, 1698).

—irrelevance (325 - 239).

—not a 2 *R.* discussion (323 - 113)

—where more than one speech allowed on (325 - 701).

—3 *R.*

—irrelevance (318 - 1499, 1505).

—limited to what is in Bill (324 - 952); (321 - 567, 568, 600, 623)

—must be confined to what is in Bill (318 - 1499, 1777), (321 - 567, 568, 640, 651), (323 - 88, 1318), (324 - 952, 1149).

—civil servants, reference to (32 - 1592).

*—Committee, point decided in, cannot be debated again on Committee stage (323 - 558).

—epithets, not allowed in (319 - 28, 329).

—Foreign State, references to Representative of (317 - 261, 348); (320 - 23, 226, 227).

Debate (*continued*)

—Finance

—Bill

—Member entitled to an answer (326 - 1310).

—Budget proposals, irrelevance (323 - 212)

—Estimates, Supplementary, policy cannot be discussed (320 - 305, 307, 308, 309, 357).

—Import Duties, discussion of two together (318 - 339); (321 - 113)

—irrelevance (321 - 116, 123)

—Resolutions, debate on (321 - 998 to 1002, 1003 to 1007)

—Supply, *Com.* of

—anticipation of debate not allowed (321 - 2302)

—irrelevance (321 - 1987, 1436, 2371).

*—matters requiring legislation cannot be discussed (324 - 360), (325 - 783).

—questions asking of (326 - 2928, 2963).

—time passed for moving reduction (321 - 2328).

*where subject has a separate Vote, it can only be discussed on that Vote (324 - 1660).

—on *Rep.*

—*amdt.* not allowed on, without notification (321 - 2293, 2294).

—discussion on Vote taken with another Vote (321 - 2621 to 2623)

—innuendoes (317 - 1924).

—irrelevance (321 - 2618, 1743, 1748); (322 - 2147); (321 - 2299, 2301); (326 - 2907, 2709, 2920, 2929).

—wide discussion on Vote (321 - 2579, 1783, 2375 to 2379)

—Ways and Means.

—On *Rep.*

—irrelevance (320 - 1792)

—Foreign Representatives in this country, references to, not allowed (317 - 260, 261, 348)

—Foreign Secretary has as much right to say what he likes as other Members (317 - 1924)

—innuendoes (317 - 1924)

—interruptions (318 - 781), (319 - 99); (321 - 2969, 3041); (322 - 1043).

—irrelevance (320 - 1550, 1572); (321 - 876, 891, 895, 896, 902 to 905, 907, 913 to 916), (326 - 1584, 2047)

—Judges, criticisms of judgments of (325 - 768)

Debate (*continued*).

- Justiciary, may not be criticized by Member (322 - 316)
- Lords, House of, see "Another Place" hereof, and Lords' Amendments.
- matter cannot be pursued (317 - 514).
- Member } —see those headings.
- Minister }
- Minister, cannot speak for German Minister (326 - 316)
- motion(s).
 - cannot be discussed until *amda* disposed of (318 - 1369).
 - for presentation of List of Stocks (*vide* Colonial Stock Act, 1900), not then debatable (326 - 2376).
 - irrelevance (319 - 994), (326 - 1584); (317 - 996).
- Progress, motion to report.
 - *—not accepted (326-947).
 - *—question involved cannot be debated (326 - 598).
- Parliamentary expressions
 - allowed*.
 - "humbug" used impersonally (324 - 1831)
 - not allowed*
 - "a bloody swine" if said with Mr. Speaker's knowledge (320 - 599).
 - cupidity (322 - 565).
 - *—"offensive" epithet must not be used about other Members (318 - 618).
 - stupidity (322 - 565)
- reading of speeches forbidden, but Members permitted to make copious use of notes and to have statements written out (321 - 1011).
- refusal to accept Ruling of Speaker, remark must be withdrawn (326 - 1782)
- *—remark must be withdrawn (320 - 1492); (322 - 2122).
- reply, right of (322 - 1067).
- repetition (320 - 2418).
- *—selection of speakers within discretion of Chairman (320 - 1492).
- statements in *The Times* not taken as evidence (324 - 254)
- vote of censure on Government, narrow limits of (319-861)
- "you" means the Chair (317 - 433).

Division.

- *—Member bound by his voice (326 - 2811)
- *—Members standing up, non-announcement of figures (326 - 2813 to 2815).

Division (*continued*)

- not necessary to achieve object (317-660)
- recording vote of Member (319-1691)
- unnecessarily claimed (326-2366, 2367).
- vote, recording of (319-1681)

Document, distribution of, to Members by Foreign Embassy,
no Ruling *re* (320-228).

Eleven o'Clock Rule.

- exact hour is first stroke (318-2780, 2781).

Estimates. *See* Finance.

Expiring Laws Continuance Bill¹ (317-1053, 1579, 1580).

Finance.

- “continuanee of existing policy” (326-1402 to 1406).
- debate—*see* that heading
- Financial Resolutions
 - *—*amds* going beyond terms of, out of order (322-1445 to 1459, 1461)
 - required (326-1404 to 1406)
- S.O. 69 motion for omission of (321-823, 824).

Government.

- narrow limit in debate on Vote of Censure upon (319-861).

Instructions.

- out of order (319-427)
- See also* Debate

Lords, House of. *See* Debate (“Another Place”) and Lords’ Amendments.

Lords’ Amendment(s).

- “Another Place” *See* Debate.
- Amdts.*
 - Bill cannot be discussed on (326-2632)
 - consideration of (326-2608, 2609).
 - only one speech on clause (326-3042).
 - procedure upon (326-2609)
 - put *en bloc* (326-3268, 3270).

¹ 1 Geo. VI, c 1

Lords' Amendment(s) (*continued*)

—Privilege.¹

—*amdt(s)*

—by Lords, may be accepted or not (326 - 1143, 1145).

—raising question of (326 - 1167 to 1169).

—social entry (318 - 2785), (326 - 1168, 1170)

—not raising question of (326 - 1162)

—extending powers of local authorities as might affect local rates (326 - 1162) \

—charges from Treasury (326 - 1158).

—payment.

—of subsidy (326 - 3481 to 3483).

—to farmer (326 - 3487)

—question of.

—as allowing a longer period to count for superannuation (326 - 3053).

—as affecting the term of service (326 - 3491).

—as bringing in more persons for allowance in Superannuation Bill (326 - 3052)

—as not applying registration to certain cases (326 - 3490)

—as restricting the service in calculating superannuation allowance (326 - 3054).

—of adding a committee (326 - 3491).

*—waiving of (326 - 1778 to 1780).

Member(s).

—addressing Chair (325 - 2102); (326 - 677)

—always at liberty to put a Point of Order to Speaker (320 - 2418).

—anticipation (318 - 2583 to 2585).

—calling of a, within discretion of Chair (326 - 2327).

—cannot:

—address one another (317 - 185, 189)

—criticize actions of an Ambassador of a Foreign State (317 - 348).

*—intervene unless Member in possession of House gives way (321 - 1257), (325 - 1561)

—quote anything said by His Majesty, to influence debate (317 - 71).

—repeat peroration of another (319 - 1888).

—speak more than once in House (321 - 2968)

¹ i.e., "monetary."

Member(s) (*continued*)

- debate—*see* also that heading
- decease of, reference to be made from Chair (326 - 2208, 2209, 3100).
- entitled to a hearing (319 - 1706); (320 - 2338).
- Foreign Power, apology by Minister for statement made by (317 - 260, 261)
- indication of desire by, to speak (326 - 2328, 2329).
- in possession of House
 - no other has right to be on his feet (326 - 1911).
 - unless gives way (322 - 1692).
- in charge of Bill from Standing Com. not restricted to one speech on *Rep* (325 - 701)
- interrupted speech, for Private Business (S.O. 6) may be resumed (322 - 257)
- interrupting, warned by Mr Speaker (322 - 1043)
- irrelevance (317 - 1637, 1638, 1718); (321 - 640, 642, 649 to 651, 657)
- Justiciary may not be criticized by (322 - 316).
- making personal explanation, may not use that opportunity to attack another Member (320 - 560).
- may not
 - ask if Minister's attention has been drawn to statement in a newspaper (325 - 175)
 - speak twice on 2 R. (321 - 2968), (318 - 2709).
- must be referred to, in debate, in third person (320 - 2267).
- must:
 - address Chair (317 - 1003); (326 - 685).
- *—remain seated when Chairman rises (325 - 1561).
- resume seat unless Member gives way (322 - 1692).
- must not:
 - address one another (317 - 185).
 - interrupt unless Member gives way (321 - 1257).
 - quote anything said by His Majesty with view to influencing debate (317 - 71).
 - refer to other Members personally but address remarks to Chair (317 - 188)
- named for disregarding authority of Chair (322 - 2123).
- not answerable for what appears in papers (320 - 816).
- notice of motion, ballot for, allowable on behalf of friend (317 - 1796)
- order of calling (326 - 2327 to 2329).
- personal explanations (320 - 600)
- petition, must not read whole of (323 - 1129).

Members (*continued*).

- pointing at another (326 - 3210).
- Private, Bills (318 - 782)
- requested to withdraw (326 - 1782, 1783).
- rising during debate, in interruption (321 - 2969, 3041).
- *—remarks of, should be addressed to Mr. Speaker (317 - 1003)
- *—right of, to draw attention of Chair to fact that not forty present (321 - 633).
- should not make accusation of lying against a (323 - 1355)
- suspended from service of House for disregarding authority of the Chair (320 - 1493 to 1495)
- suspension of, only recourse of redress to put down motion complaining of treatment (320 - 2192, 2193)
- *—too late, Adjournment moved (319 - 1380)
- unselected *amdt*, mover allowed explanation (318 - 1693, 1694)
- vote of, recording (319 - 1681).
- withdrawal of, requested (326 - 1782, 1783)

Minister.

- absence of (317 - 623).
- assurance of (326 - 1191 to 1193)
- cannot.
 - give answer to Q. if not responsible (323 - 519).
 - reply again except by leave of the House (321 - 2379)
 - speak for the German mind (326 - 316)
 - speak more than once in the House (321 - 2994)
- duty of Chair to protect, as well as other hon. Members (326 - 1490)
- may not.
 - be asked whether his attention has been drawn to statement in a newspaper (325 - 175).
 - speak twice in the House if leave not given (321 - 2994).
- must be allowed to make own reply (319 - 486).
- not:
 - required to be in his place during debate on his Bill (325 - 1802).
 - responsible for Press reports (318 - 9).
- out of order to make statement (321 - 2141).

Motion(s).

- ballot for notice of, Member may give notice on behalf of friend (317 - 1796)
- *—to report Progress (321 - 1800 to 1801).

Notice(s).

—of motion, not time to give (321 - 173)

Order.

- not a point of (317 - 1368, 1668, 1670); (317 - 1670), (318 - 6, 2623); (318 - 2672), (320 - 599), (322 - 573, 576, 1362), (323 - 772, 963), (324 - 565, 761, 1830); (325 - 188, 658, 1173); (326 - 2187, 3259, 3595), (326 - 3237)
- point of, Member always at liberty to put (320 - 2418).
- record of vote of Member (319 - 1681)
- See also* Members

Order of the Day.

*—right of Government to arrange (323 - 497).

Petition.

—Member must not read whole of (323 - 1129)

Press Reports.

—Minister not responsible for (318 - 9).

Privilege.¹

- Mr Speaker sole guardian of, in House (326 - 595)
- See* "Lords' Amendments" for monetary privilege

Prorogation.

—King's Speech upon (327 - 185)

Questions to Ministers.

- all possible information given by Minister (323 - 32, 33)
- answer to, may be given to Member before given to House (320 - 1003)
- argument developing (325 - 347).
- answered orally in private (325 - 1531, 1532).
- asked yesterday, cannot be gone back to (326 - 555).
- asking of, after 3 45 p.m. not allowed (323 - 342)
- asking of, in order, but not making of statement (321 - 543).
- cannot be debated (321 - 782); (326 - 843).
- debate developing and not allowable* (318 - 1837),* (321 - 782); (322 - 1409), (323 - 1252), (326 - 843, 2648, 2663).

¹ i.e., "non-monetary"

Questions to Ministers (*continued*)

- during debate (318 - 2518 to 2519).
- duty of Chair to protect Ministers as well as Members (326 - 1490).
- expression of thanks (323 - 1234).
- factory extensions (321 - 539).
- *—failure to answer and enquiries being made (317 - 1333 to 1334).
- Foreign Representative, reference to (320 - 225 to 227)
- for written answer (324 - 1595)
- *—arrangements for prevention of delay (326 - 2405, 2406).
- *—speed of reply (323 - 1163, 1164).
- further aspects of subject can be dealt with in debate (317 - 254)
- hearsay, questions based on (321 - 776).
- hypothetical (323 - 7); (324 - 667)
- inaccurate statements, penalty, inaccuracy must first be proved (325 - 188)
- information being given (318 - 835), (321 - 1145); (322 - 1165); (324 - 1734).
- interruption (324 - 1738).
- Iraq (318 - 319).
- King's name must not be brought in (318 - 532).
- length of (318 - 837); (318 - 2166); (325 - 371).
- many more on Paper (322 - 1421)
- matter
 - debated for last ten minutes (32 - 833).
 - cannot be debated (318 - 1937); (326 - 2648).
 - to be discussed in House (326 - 742).
 - cannot be gone into (321 - 165), (326 - 1053).
 - cannot be pursued (324 - 263)
- Member(s):
 - cannot be answerable for what appears in the papers (320 - 816).
 - not present should ask another Member to put (325 - 187).
 - making attacks in, make themselves responsible for (324 - 993)
 - responsible for statement in (318 - 5); (320 - 815); (324 - 253, 1155)
 - responsible for information in (320 - 1155); (324 - 253).
 - salaries (324 - 1765)
 - speaking without confirmation (323 - 319).
- Minister not responsible for German Press (325 - 1941).

Questions to Ministers (*continued*).

- Minister, request for pamphlet (318 - 542).
- must be carried on in orderly way (326 - 1490)
- newspaper reports, references to (325 - 821, 822)
- next (317 - 865); (318 - 527, 1634, 2139); (320 - 25, 168);
(323 - 782, 1329, 2053), (322 - 1913), (325 - 187, 1196);
(326 - 149)
- no epithet heard (325 - 827).
- no such, heard (328 - 1822)
- no actual rule that Members should concentrate on matters
affecting own constituencies (325 - 186).
- not allowed (320 - 1617)
- not a proper (325 - 344)
- nothing more to ask (321 - 2875)
- notice
 - given to raise question on Adjournment (322 - 1410)
 - required and question should be put down (320 - 840),
etc
- not Q. for Mr Speaker to answer (322 - 588).
- number:
 - on Order Paper (317 - 213)
 - on Paper and rights of Member must be protected
(326 - 1229, 1230).
- on Constitutional position (318 - 1643, 1644).
- on Indian affairs (325 - 371, 553, 554, 557).
- one at a time (326 - 842)
- open to some possible misinterpretation but not out of
order (318 - 5)
- opinion
 - being given (319 - 28).
 - matter of (321 - 955), etc
- opportunity lost (320 - 404).
- past incidents cannot be gone into (321 - 3066).
- postponement (325 - 553, 567)
- Prime Minister, Minister can act as intermediary (325 -
1349).
- Private Notice (320 - 409, 410); (321 - 2759), (326 - 1488).
 - latter part of question as addressed to Minister not in
Notice submitted (326 - 1487).
 - must be framed in accordance with notice given (326 -
1488)
 - not called, explanation (326 - 1492, 1493).
 - putting of a matter for Mr. Speaker (326 - 2201).
 - to be put on Order Paper (325 - 1969).

Questions to Ministers (*continued*)

- proceedings pending (323 - 518).
- reflection on Chair, *Q* not taken as (318 - 2598)
- rejection of (324 - 681).
- repetition (324 - 826).
- repetition of reply to previous question might set bad precedent (318 - 424)
- replies (321 - 2054), (326 - 1229, 3093)
 - given (319 - 7); (320 - 1336); (323 - 773); (326 - 1053).
 - information would have been given, if possessed (321 - 1625).
 - no more can be said (324 - 655, 657).
- *—orally, in Private (325 - 1531, 1532).
- point dealt with in (324 - 17).
- *—provision of, to Member before given to House (320 - 1003).
- *—request by Minister for pamphlet (318 - 542)
- *—return to, to clear up misunderstanding (326 - 3094).
- Secretary of State
 - for Scotland, not responsible for matters in England (318 - 2456).
- *—for Foreign Affairs, explanation of absence of (322 - 620).
- should be put
 - down (317 - 1921); (320 - 981)
 - to Department concerned (325 - 1349).
- *—to Lord President of Council, to be addressed to him (324 - 1425).
- slow progress (326 - 1057)
- speech must not be made (325 - 1634, 1778).
- statement in respect of, not reached, cannot be allowed (317 - 253).
- suggestions must not be made at *Q*. time (321 - 1145).
- Supplementary
 - another issue (318 - 533, 2155, 2157), (323 - 1223).
 - *—another matter (321 - 1315); (325 - 363, 1190, 1644)
 - *—another point (325 - 545).
 - another *Q*. (317 - 685), (318 - 36), (320 - 825); (326 - 330).
 - another subject (318 - 1404); (319 - 32).
 - answer already given (321 - 780).
 - asking something disallowed in original *Q*. (324 - 1954).
 - beyond *Q*., on Order Paper (320 - 976), (321 - 2054), (326 - 2644).

Questions to Ministers (*continued*).—Supplementary (*continued*)

- *—different (317-504); (318-1407, 1625, 1807, 1838, 2438, 2450, 2614).
 - different from, on Order Paper (322-780)
- *—different issue (318-2801), etc
 - language should not be used in (320-2174).
 - long Q, put and reply received (324-1398, 1399).
 - may not be read by Member and must be spontaneous (326-2200, 2201)
 - Member cannot keep on asking the same (325-540).
 - Minister may not be asked whether his attention has been drawn to a statement in a newspaper (325-175)
 - much larger (317-1913)
 - no more can be asked (325-345).
- *—no resemblance to, on Paper (322-1405).
 - not arising (318-2137), etc.
 - nothing to do with, on Paper (325-1196).
 - nothing to do with Private Notice Q. (325-205).
 - number of (323-519).
 - one or two already asked (323-774)
 - out of order (325-199).
 - outside the (321-1516).
 - outside the Q. on Paper (326-3279).
 - point raised further than that in original (325-361).
 - reading of, not allowed (326-2200, 2201)
 - refusal of permission to ask (318-1639)
- *—separate (318-206); (320-1366), (321-2542); (323-6), etc
 - *—separate matter (319-338), (323-505).
 - *—subject cannot be dealt with in answer to (320-555).
- *—too far from, on Paper (317-849).
 - usually asked after reply to Q. (323-963)
 - which would not be allowed as Q. on Paper, not to be asked (326-1040).
- *—wider than, on Paper (317-507); (320-216, 2345, 2346); (326-3285).
- too much time spent on (320-988).
- transfer from one Minister to another (318-1027, 1028); (326-2856)
- two answers already given (320-1326).
- when notice given of intention to raise matter on future occasion, very unusual to pursue (318-2139).

Quorum.

—House counted at 8.9 o'clock (321 - 633).

Regulations.

—Prayer to, must be withdrawn before an amended Regulation can be brought forward (324 - 1308).

Return.

—assent of Department, when required before House can Order (326 - 1936)

Seven-Thirty Rule (S.O. 6).¹

—Member's speech interrupted by, may be resumed (322 - 257).

Sitting Suspended.

—for R.A. to His Majesty's Declaration of Abdication Bill (318 - 2233).

—for Message from King Edw. VIII (318 - 2186).

Speaker, Mr.

—absence of (318 - 2429, 2591, 2793).

—*amdt(s)*.

—new clause not selected (324 - 1191).

—not called (326 - 1191).

—not selected (325 - 2343), (325 - 1618).

—not selected, decision must be accepted (326 - 1375).

—selected clause (326 - 1321).

—selection of (325 - 2291)

—selection of, rests with (326 - 1375).

—to Address in Reply, selected by (317 - 257, 258).

—under no obligation to make explanation as to selected (322 - 2229).

—arrangement of Business, not a matter for (323 - 540)

—“catching eye of” (326 - 2327 to 2329), (318 - 782).

—declaration by, that the “Ayes” have it (326 - 1021, 1022).

¹ Paragraph (4) of the S.O. reads:

“(4) Private business, if so directed by the Chairman of ways and means, shall be taken at half-past seven of the clock on Monday, Tuesday, Wednesday or Thursday, or as soon hereafter as any motion for the adjournment of the House standing over has been disposed of, provided that such business shall be distributed as near as may be proportionately between the sittings on which Government business has precedence and the other sittings.”

Speaker, Mr. (continued)

- defends "Clerk-at-the-Table" (321 - 2076, 2077).
- Deputy takes chair, on daily notification of absence of (318 - 2429, 2591, 2793)
- not prepared to act as judge as to what is true and untrue (319 - 205).
- not prepared to be accused of waiving the privileges (monetary) of the House (326, 1199).
- refusal to accept Ruling of, remark must be withdrawn (326 - 1782)
- says, "*Orderly debate and the right of reply is the common tradition of the House which we regard as one of our greatest prizes*" (322 - 1067)
- *—sole guardian of Privilege in House (326 - 595).
- suspension of Member, reported from *C.W.H.* (322 - 2123, 2124)
- unwilling to give Ruling on motion of omission of S.O. 69 (Money Committees) leaving matter for House to decide (321 - 823, 824).

Supply. See Finance; also Debate.

"You."

- means the Chair (317 - 433)

XII. LIBRARY OF PARLIAMENT

BY THE EDITOR

VOL. I of the JOURNAL contained¹ a list of books suggested as the nucleus of a Statesmen's Reference Collection in the Library of an Oversea Parliament. Volumes II,² III,³ IV⁴ and V⁵ gave lists of books on economic, legal, political and sociological questions of major importance, published during the respective years, and below is given⁶ a list of works on such subjects published last year. Biographies, historical works, and books of travel and fiction, as well as books on subjects of more individual application to any particular country of the British Empire, are not included in these lists, it being considered unnecessary, in any case, to suggest to the Librarian of each Parliament books on any such subjects.

A good Library available to Members of Both Houses of Parliament during Session, and by a system of postal delivery (with the exception of standard works of reference), also during Recess, is a great asset. The Library is usually placed in charge of a qualified Librarian, and in most of the Oversea Parliaments is administered by a Joint Committee of Both Houses under certain Rules.⁶ The main objective should be to confine the Library to good material; shelves soon get filled, and there are usually Public Libraries accessible where lighter literature can be obtained. By a system of mutual exchange, the Statutes, Journals and *Hansards* of the other Parliaments in the Empire can easily be procured. Such records are of great value in obtaining information in regard to the framing and operation of legislation in other parts of the Empire, as well as looking up the full particulars in connection with any question of procedure referred to in the JOURNAL.

Armstrong, J. W. Scobell—The Taxation of Profits. (Virtue 7s. 6d.)

Bainville, Jacques—Dictators (Trans. by J. Lewis May) (Cape 10s. 6d.)

Baskerville, Beatrice.—What Next, O Duce? (Longmans. 10s. 6d.)

Binkley, R. C.—Realism and Nationalism, 1852-1871. (Harpers 15s.)

Bowman, William Dodgson—The Story of the Bank of England. (Jenkins. 10s. 6d.)

The British Empire. A Report on its Structure and Problems by a Study Group of Members of the Royal Institute of International Affairs. (Milford. 15s.)

¹ P. 112 *et seq.*

² P. 132 *et seq.*

³ P. 127 *et seq.*

⁴ P. 148 *et seq.*

⁵ P. 218 *et seq.*

⁶ See JOURNAL, Vol. V, 166-197.

- Brooks, Leslie*.—Matrimonial Causes (Butterworth 7s 6d)
Brown, Ina Corinne—The Story of the American Negro (Student Christian Movement Press 5s)
Busschau, W J—The Theory of Gold Supply. (Milford. 10s 6d.)
Gummings, Homer and McFarland, Carl—Federal Justice. (Macmillan. 2s)
Dover, Cedric.—Half-Caste. ¹(Sekker and Warburg 10s 6d)
Einsig, Paul.—Will Gold Depreciate? ²(Macmillan 7s 6d)
 —The Theory of Forward Exchange (Macmillan. 21s.)
Ellis, Havelock—The Soul of Spain New Ed (Constable 6s)
Evans, John D E—Belgrade Slant. (Hurst and Blackett 5s)
Finer, Herman—The British Civil Service (Allen and Unwin 5s)
Friend, J W, and Feibleman, J—The Unlimited Community. (Allen and Unwin 15s)
G E. C. (Ed by H. A. Doubleday and Lord Howard de Walden)—The Complete Peerage. Vol IX (St. Catherine's Press. 73s 6d)
Hall, R L—The Economic System in a Socialist State (Macmillan 7s 6d)
Hancock, W K—Survey of British Commonwealth Affairs (Milford. 15s)
Hudson, G. F—The Far East in World Politics. (Milford. 7s 6d)
Hyde, H Montgomery and Nuttall, G R Falkner.—Air Defence and the Civil Population (Cresset Press 12s 6d)
Ishii, Ryoichi.—Population Pressure and Economic Life in Japan (P. S King. 12s. 6d)
Iversen, Carl—Aspects of the Theory of International Capital Movements (Milford 15s)
Johnson, A. Campbell.—Peace Offering (Methuen 5s)
Joshu, G. N—Indian Administration. (Macmillan 6s)
Kennedy, A L—Britain Faces Germany. (Cape. 5s)
Kent, P H B—The Twentieth Century in the Far East (Edward Arnold 16s)
de Kiewiet, C. W.—The Imperial Factor in South Africa (Cambridge University Press. 15s.)
Lewis, Wyndham.—Count Your Dead. They are Alive! (Lovat Dickson. 7s. 6d)
Lippman, Walter.—The Good Society. (Allen and Unwin. 10s. 6d)
Macardle, Dorothy—The Irish Republic (Gollancz. 25s.)
Macartney, C A—Hungary and Her Successors. (Milford. 25s.)
Main, Ernest.—Palestine at the Crossroads (Allen and Unwin. 7s. 6d)
McCleary, G F.—The Menace of British Depopulation. (Allen and Unwin 4s. 6d.)

- Meshlank, V I.*—The Second Five Year Plan for the Development of National Economy of the U.S.S.R., 1933-37. (Lawrence and Wishart. 8s 6d)
- Mogannam, Mrs Matiel E. T.*—The Arab Woman and the Palestine Problem. (Herbert Joseph. 12s 6d.)
- Morris, Nathan.*—The Jewish School (Eyre and Spottiswoode. 10s 6d)
- Mumford, W Bryant* (in consultation with Major G St. J Orde-Brown).—Africans learn to be French. (Evans Brothers. 5s.)
- Notcutt, L. A., and Latham, G. G.*—The African and the Cinema. (Edinburgh House Press. 3s. 6d)
- Paul, W Rodman*—The Abrogation of the Gentlemen's Agreement. (Cambridge, Mass The Society London Milford. 6s)
- Perham, Margery*—Native Administration in Nigeria. (Milford. 17s 6d)
- Plummer, Alfred*—Raw Materials or War Materials? (Gollancz. 3s 6d.)
- Rawlinson, H G* (Ed by Professor C G. Seligman)—India. A Short Cultural History (Cresset Press 30s)
- The Republics of South America*—A Report by a Study Group of Members of the Royal Institute of International Affairs. (Milford 21s)
- Roberts, Stephen H.*—The House that Hitler Built. (Methuen 12s. 6d)
- Roosevelt, Theodore*—Colonial Policies of the United States. (Nelson. 7s. 6d.)
- Siegfried, Andre*—Canada. (Trans by H H Hemming and Doris Hemming). (Cape. 10s 6d)
- Smith, W. Millar*—The Marketing of Australian and New Zealand Primary Products (Pitman. 12s. 6d)
- Snow, Edgar*—Red Star Over China (Gollancz 18s.)
- Swynnerton, C F M*—The Tsetse Flies of East Africa (The Royal Entomological Society of London Vol. 84 £5 10s.)
- Thompson, Virginia.*—French Indo-China. (Allen and Unwin. 21s.)
- Watts, Alan W.*—The Legacy of Asia and Western Man. (John Murray. 6s.)
- Whitaker, John T.*—Fear came on Europe. (Hamish Hamilton 10s. 6d)
- Whitehead, T N.*—Leadership in a Free Society. (Milford. 10s 6d)
- Willert, Sir Arthur, Long, B K, and Hodson, H. V.*—The Empire in the World. (Oxford University Press. London. Milford 10s 6d)
- Wolff, T.*—Through Two Decades (Trans. by E W Dikes.) (Heinemann. 15s)
- Wyndham, H A.*—The Atlantic and Emancipation. (Milford. 12s 6d.)
- Zweig, Arnold.*—Insulted and Exiled. (Trans by Eden and Cedar Paul.) (John Miles 10s. 6d)

XIII LIBRARY OF "THE CLERK OF THE HOUSE"

BY THE EDITOR

THE Clerk of either House of Parliament, as the "Permanent Head of his Department" and the technical adviser to successive Presidents, Speakers, Chairmen of Committees and Members of Parliament generally, naturally requires an easy and rapid access to those books and records more closely connected with his work. Some of his works of reference, such as a complete set of the Journals of the Lords and Commons, the Reports of the Debates and the Statutes of the Imperial Parliament, are usually more conveniently situated in a central Library of Parliament. The same applies also to many other works of more historical Parliamentary interest. Volume I of the JOURNAL contained¹ a list of books suggested as the nucleus of the Library of the "Clerk of a House," including books of more particular usefulness to him in the course of his work and which could also be available during Recess, when he usually has leisure to conduct research into such problems in Parliamentary practice as have actually arisen or occurred to him during Session, or which are likely to present themselves for decision in the future.

Volume II² gave a list of works on Canadian Constitutional subjects and Volumes IV³ and V⁴ a similar list in regard to the Commonwealth and Union Constitutions respectively.

Volumes II,² III,⁵ IV⁶ and V⁷ gave lists of works published during the respective years. Below is given a list of books for such a Library, published last year.

Alfange, Dean—The Supreme Court and the National Will. (Hodder and Stoughton. 12s. 6d.)

Clementi, Sir Cecil—A Constitutional History of British Guiana. (Macmillan. 20s.)

Edwards, William—Crown, People and Parliament 1760-1935. (Arrowsmith. 8s 6d.)

Friedrich, Carl Joachim—Constitutional Government and Politics (Harpers. 15s.)

Jennings, Ivor—Cabinet Government. (Cambridge University Press. 21s.)

McLaughlin, A. C.—Constitutional History of the United States. (Appleton-Century 1935 21s.)

¹ Pp 123-126.

⁴ P. 223 ⁵ P 133

² Pp. 137, 138.

⁶ Pp 152-154

³ Pp 153-154

⁷ Pp. 222, 223

Panikkar, K. M —The Indian Princes in Council (Oxford University Press London Milford 5s)

Radcliffe, G R Y, and Cross, Geoffrey —The English Legal System. (Butterworth 16s)

Senning, John P. —The One-House Legislature. (McGraw Hill 8s 6d)

Smellie, K B —A Hundred Years of English Government. (Duckworth 15s)

Wilkinson, B —Studies in the Constitutional History of the Thirteenth and Fourteenth Centuries. (Manchester: University Press. 12s 6d.)

XIV. RULES AND LIST OF MEMBERS

The Society of Clerks-at-the-Table in Empire Parliaments.

Name.—1. That a Society be formed, called “The Society of Clerks-at-the-Table in Empire Parliaments.”

Membership.—2. That, any Parliamentary Official having duties at the Table of any Legislature of the British Empire as the Clerk, or a Clerk-Assistant, or any such Officer retired, be eligible for membership of the Society upon payment of the annual subscription.

Objects.—3. That the objects of the Society be:

(a) to provide a means by which the Parliamentary practice of the various Legislative Chambers of the British Empire be made more accessible to those having recourse to the subject in the exercise of their professional duties as Clerks-at-the-Table in any such Chamber;

(b) to foster a mutual interest in the duties, rights and privileges of Officers of Parliament;

(c) to publish annually a JOURNAL containing articles (supplied by or through the “Clerk of the House” of any such Legislature to the Editor) upon questions of Parliamentary procedure, privilege and constitutional law in its relation to Parliament;

(d) it shall not, however, be an object of the Society, either through its JOURNAL or otherwise, to lay down any particular principle of Parliamentary procedure or constitutional law for general application, but rather to give, in the JOURNAL, information upon those subjects, which any Member, in his own particular part of the Empire, may make use of, or not, as he may think fit.

Subscription.—4 That the annual subscription of each Member be £1 (payable in advance).

List of Members.—5. That a list of Members (with official designation and address) be published in each issue of the JOURNAL.

Officers.—6. That two Members be appointed each year as Joint Presidents of the Society who shall hold office for one year from the date of publication of the annual issue of the JOURNAL, and that the Clerk of the House of Lords and the Clerk of the House of Commons be invited to hold these offices for the first year, of the Senate and House of Commons of the Dominion of

Canada for the second year, the Senate and House of Representatives of the Commonwealth of Australia the next year, and thereafter those of New Zealand, the Union of South Africa, Irish Free State, Newfoundland and so on, until the Clerk of the House of every Legislature of the Empire who is Member of the Society has held office, when the procedure will be repeated.

Records of Service.—7. That in order better to acquaint the Members with one another and in view of the difficulty in calling a meeting of the Society on account of the great distances which separate Members, there be published in the JOURNAL from time to time, as space permits, a short biographical record (on the lines of a Who's Who) of every Member

Journal.—8 That two copies of every publication of the JOURNAL be issued free to each Member The cost of any additional copies supplied him or any other person to be at 20s. a copy, post free

Honorary Secretary-Treasurer and Editor.—9. That the work of Secretary-Treasurer and Editor be honorary and that the office may be held either by an Officer or retired Officer of Parliament, being a Member of the Society.

Accounts.—10 Authority is hereby given the Honorary Secretary-Treasurer and Editor to open a banking account in the name of the Society and to operate upon it, under his signature, a statement of account, duly audited, and countersigned by the Clerks of the Two Houses of Parliament in that part of the Empire in which the JOURNAL is prepared, being published in each annual issue of the JOURNAL. (*Amended 1936*)

LONDON,
9th April, 1932.

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Cable Address : CLERDOM CAPETOWN.

Honorary Secretary-Treasurer and Editor : E. M. O. Clough.

* Barrister-at-law or Advocate

XV. MEMBERS' RECORDS OF SERVICE

Note.—*b* = born; *ed.* = educated, *m* = married, *s.* = son(s),
d. = daughter(s); *c* = children; *cr* = created.

Members who have not sent in their Records of Service are invited to do so, thereby giving other Members the opportunity of knowing something about them. It is not proposed to repeat these records in subsequent issues of the JOURNAL, except upon promotion, transfer or retirement, when it is requested that an amended record be sent in.

Beauchesne, Arthur, C.M.G., B.A., M.A., K.C., LL.D., Litt.D., F.R.S.C.—Barrister, Clerk of the House of Commons; *b.* Carleton, Bonaventure Co, P.Q., June 15, 1876, *s.* of late Pierre Clovis Beauchesne, Notary, who represented that county in Quebec Legislative Assembly, 1874-76, and in the House of Commons, 1879-1882, and Caroline (Lefebvre de Bellefeuille) Beauchesne, *ed.* St Joseph's (Classical Course), Memramcook, N.B.; B.A, M.A, and Litt. D.; Valedictorian 1895, studied Law at Laval, Montreal. Private Secretary to Sir Adolphe Chapleau, January-July, 1897, Journalist from 1897-1904; admitted to Bar of Quebec in 1904; K.C. in 1914; *m* Florence Le Blanc of Ottawa, formerly of Dorchester, N.B., June 14, 1916, twin daughters; unsuccessfully contested Bonaventure for Federal seat in 1908 and for the local in 1912, founded and edited "L'Opinion" in Montreal in 1905; Legal Adviser, Justice Dept., 1913-16, when appointed Clerk-Assistant of the House of Commons and Commissioner to administer the Oath of Allegiance, author of "Beauchesne's Parliamentary Rules and Forms," "Ecrivains d'autrefois" and of several lectures and pamphlets; one of the founders and Hon. President of l'Association Technologique de Langue Française d'Ottawa, Life Member of l'Institut Canadien Français d'Ottawa; member of Canadian Institute of International Affairs; Fellow of the Royal Society of Canada, 1924; Hon. Secretary of the Empire Parliamentary Association (Canada Branch), and of the Inter-Parliamentary Union, Canadian group; Vice-Treasurer Association of Canadian Clubs, also President of the Canada Club, Ottawa, 1931-32, Member of Executive Board of Canadian Geographical Society; LL.D., Ottawa University, 1931; past President of Section I of Royal Society of Canada; appointed Secretary, Royal Society

of Canada, May, 1936. Appointed Clerk of the House of Commons January 7, 1925, Notary Public for Ontario *Cr. C.M.G.* New Year's Honours, 1934. Member of Royal Ottawa Golf Club and Rideau Club, Religion, Catholic. Address 417 Laurier Ave., East, Ottawa, Ontario.

Blount, Austin Ernest, C.M.G.—Clerk of the Parliaments and Clerk of the Senate since February, 1917; *b.* May 30, 1870, at Stanstead, Quebec. *S.* of M. Blount and his wife, *née* C. Powell, both Canadians; *m.* July 23, 1894, Alice Dalpe, *d.* of S. Dalpe (deceased April, 1919). One *s.* James; *m.* secondly January, 1922, Louise Rankin Thomson, of Glasgow, Scotland; Private Secretary to the Rt. Hon. Sir Charles Tupper, Bart., 1896-1901 and 1901-1917, Private Secretary to the Rt. Hon. Sir Robert L. Borden, Prime Minister of Canada. *Cr. C.M.G.*, Birthday Honours, 1918. Address. The Senate, Ottawa.

Ferris, C. C. D.—Clerk of the Legislative Assembly of Southern Rhodesia since March 7, 1937, Clerk-Assistant 1926-1937, *b.* 1890, Douglas, Cape Colony, youngest *s.* of the late Robert Charles Ferris, Civil Commissioner and Resident Magistrate; *m.* Estella Blanche, youngest *d.* of the late Egerton Griffiths of Aliwal, North, Cape Colony, *4 c.*, *ed.* Diocesan College, Rondebosch, Cape Colony; entered Southern Rhodesian Civil Service 1911; Clerk in the Mines Department, Salisbury; acting Accountant Mines and Works Department, 1920, Acting Registrar of Claims, 1921, transferred to the Treasury, 1922; seconded to the Legislative Assembly, 1924; transferred to the Premier's Office, 1926; Acting Clerk of the Legislative Assembly and Secretary to the Premier, July-September, 1926, January-March, 1927 and September, 1929 to February, 1930; served in South African Rebellion and German South West Africa with 1st Rhodesian Regiment, 1914-1915; and in France with R. F. A. 1916-1918, with rank of Captain.

Garu, D.K.V., B.A., B.L.—Deputy Secretary, Madras Legislature and Secretary, Madras Legislative Council March 15, 1937; *b.* July 23, 1896. Entered the service March 5, 1929; Bachelor of Laws of the Madras University; Practised at the Bar; Assistant Secretary to the Madras Legislative Council, March 5, 1929-March 14, 1937; Deputed to England to study Parliamentary procedure and practice from October 31, 1929-July 29, 1930; Captain in the Army in India Reserve of Officers; Officiated as Secretary to the Legislative Council from July 30-

August 10, 1935, August 27-October 2, 1935, January 28-April 28, 1936 and August 1-October 22, 1936 Awarded the Coronation Medal in 1937.

Hemeon, C. R., I.C.S.—Legal Remembrancer to Government and Secretary to the Central Provinces Legislature since 1932; *b.* 30th January, 1897, served in Mesopotamia and the North-West Frontier in the Great War; joined the Indian Civil Service, 1st November, 1921.

Jamieson, H. B.—Clerk-Assistant and Clerk of Committees, Legislative Council, Victoria, Australia, since 1931; *b.* Melbourne, 1899; appointed to Public Service as Clerk to the Crown Solicitor, 1916; on active service with the Australian Military Forces, 1918-1919; Associate to His Honour, Mr. Justice McArthur of the Victoria Supreme Court, 1924; Clerk of the Records and Legislative Council, 1926.

Khan Hidayatullah Khan, M.A.—Secretary, N.W.F.P. Legislative Assembly, *b.* Toru (Mardan District) 7th January, 1907; *ed.* at Edward's High School, Peshawar; graduated from Edwardes College, Peshawar, in 1927, took M.A. degree of the Punjab University in 1930; joined the N.W.F.P. Civil Service through competitive examination in 1931, standing first therein; Secretary, Legislative Assembly from April, 1938.

Krishna R. V., Diwan Bahadur, Ayyar, B.A., M.L.—Secretary to the Madras Legislature, March 14, 1937; *b.* August, 1884. Entered the service July 18, 1910; Master of Laws of the Madras University; practised at the Bar, Member of the Madras Judicial Service from July 18, 1910-July 22, 1921, Assistant-Secretary to Government in the Law Dept., July 23, 1921-January 5, 1924; Secretary to the Madras Legislative Council, January 6, 1924-April, 1937; was Legal Adviser to the Indian Taxation Enquiry Committee; nominated Official Member of the Indian Legislative Assembly, August, 1935-December, 1936; was conferred the title of "Rao Bahadur," June 3, 1924, and "Diwan Bahadur," June 3, 1933, Awarded Coronation Medal, 1937.

McLachlan, H. K.—Clerk of Committees and Serjeant-at-Arms, Legislative Assembly, Victoria, Australia, since 1937; *b.* 1896, Hawthorn, Victoria; Clerk in Lands Department, 1914, and in State Public Service Commissioner's Office, 1914-17; appointed to the Parliamentary Staff in 1917, Assistant Clerk of the Papers, 1922-7, Clerk of the Papers, 1924-37.

Diwan Bahadur C. G. Nayar, B.A., B.L., Bar-at-Law (Certificate of Honour). Secretary of the Orissa Legislative Assembly since April 1, 1937. Joined Madras Provincial Judicial Service 1910 as District Munsif and served in Province as District Munsif, Subordinate Judge, Assistant Sessions Judge and District and Sessions Judge, in which office he was confirmed in 1933; Special Sessions Judge, Pudukkottai District 1932-1933; Assistant Secretary, Law Department, Under Secretary (Drafting) and Joint Secretary in the Law and Education Department of the Madras Government at different times; for some time Deputy Secretary to the Government of India, Legislative Department; Secretary Government of India Drugs Enquiry Committee; Joint Secretary Reforms Department, Government of Bihar and Orissa, 1936, and, since formation of new Province of Orissa, has been the Law and Commerce Secretary and Legal Remembrancer to that Government since 1936. Nominated Member, Madras Legislative Council, the Legislative Assembly (Central) and the Council of State at different times, also for some time Secretary to the Council of State; and Secretary to the Advisory Council, Orissa, 1936-1937. Barrister-at-Law, England, First Class in all the Preliminary Examinations and heading the list in the first class in the Bar Final. Author of a commentary on the Malabar Tenancy Act and an elected member of the Senate of the Madras University representing the Registered Graduates Constituency, Examiner for the M.L. Degree Examination, Madras University, 1924-1936.

The title of "Diwan Bahadur" conferred January 1, 1936.

Parker, Captain F. L.—Clerk of the House of Assembly, South Australia, since 1935; Chief Secretary's Dept., 1901; Chief Clerk, 1915; Chief Clerk and Accountant, Premier's Dept., 1917 and Police Dept., 1917-1918; Office Clerk, House of Assembly, Accountant to Parliament and Controller of Accounts, 1918; Clerk-Assistant and Serjeant-at-Arms, House of Assembly, Lieut. Australian Military Forces, 1909; Captain, 1913; served with Australian Imperial Forces, 1914-1916, in Egypt, Gallipoli and Sinai Peninsulas; Hon. Secretary, Empire Parliamentary Association (South Australia Branch), since 1926, and of the Royal Geographical Society of Australasia (South Australia Branch) since 1922, Vice-President, 1932, President, 1933-1936; Member Board of Editors "The Centenary History of South Australia," 1935-1936; appointed

Member Board of Governors, Public Library, Museum and Art Gallery, Adelaide, 1936; appointed also Clerk of Parliaments, 1937

Pickering, Allan, M.Ec. (Syd.).—Second Clerk-Assistant, Legislative Assembly, New South Wales, joined the Clerk's Staff, 1922; *b* 1901; graduated Bachelor of Economics, 1922, and Master of Economics, 1935, Sydney University.

Pook, P. T., B.A., LL.M., J.P.—Clerk of the Legislative Council, Victoria, Australia, since 1928 and Clerk of Parliaments since 1937; *b*. 1882, Tennyson, Victoria; Teaching Staff, Education Department, 1900-1908, Chief Secretary's Office, 1908-1911; Clerk of the Papers, Legislative Council, 1911; Clerk of Records, 1917; Usher, Clerk of Committees and Accountant, 1926

Sarah, R. S.—Usher and Clerk of the Records of the Legislative Council, Victoria, Australia, since 1935, Secretary to the House Committee since 1933; *b*. Gisborne, 1899; appointed to the Public Service as Clerk in the Official Accountant's Branch of the Department of Law, 1916; Assistant Clerk of Courts, 1916-17, Clerk in the Office of the Crown Solicitor, 1917; Clerk of the Records and Clerk assisting at the Table, Legislative Council, 1931.

Schreve, K. W.—Clerk of the Legislative Assembly, South West Africa, since 1937; *b* Mamre, Cape Province, 1902, first appointment to Union Public Service, 1923, Magistrate's Clerk at Maltahohe, South West Africa; seconded to the Legislative Assembly as Clerk-Assistant, 1926; Personal Clerk to the Secretary for South West Africa, 1934

Valladares, E.—*b*. 1908, *ed* Daniel Stewart's College, Edinburgh; clerk Transport Department, British Guiana, 1924; Clerical Assistant, Medical Department, 1926; probationary officer of Customs, 1927; 6th Class Clerk, Colonial Secretary's Office, 1932; 5th Class Clerk, 1933; Appointed Clerk Legislative Council 15th May, 1936.

Wanke, F. E.—Clerk of the Legislative Assembly, Victoria, Australia, since July, 1937; appointed to the Public Service as a Clerk in the Law Department, 1907; Assistant Clerk of the Papers, Legislative Assembly, 1913; Clerk of the Papers, 1922; Clerk of Committees and Serjeant-at-Arms, 1927.

Yusoof, S. Anwar.—Secretary to the Legislature of the Province of Bihar, Secretary of the Legislative Council of the Province of Bihar and Orissa since 1930; called to the Bar (Middle Temple) 1912, and practised in the High Court at Fort William, Bengal, and the High Court at Patna; 1924, Assistant Secretary to the Bihar and Orissa Legislative Council and Assistant Secretary to the Government in the Legislative Department; 1926 and 1928, acted as the Secretary to such Council and Deputy Secretary to the Government in the Legislative Department, 1929, served on a Deputation to India in the Legislative Department; 1931, also officiated as Deputy Secretary to the Government in such Department; and in 1934, in addition to the duties of Secretary to the Bihar and Orissa Legislative Council, officiated again as Deputy Secretary to the Government of Bihar and Orissa in the Legislative Department.

XVI. STATEMENT OF ACCOUNT AND AUDITOR'S REPORT, 1936-1937

I REPORT that I have audited the Statement of Account of "The Society of Clerks-at-the-Table in Empire Parliaments" in respect of Volume V.

The Statement of Account covers a period from 1st April, 1937, to 31st August, 1938. All the amounts received during the period have been banked with the Standard Bank of South Africa, Limited.

Receipts were duly produced for all payments for which such were obtainable, including remuneration to persons for typing and clerical assistance and roneoing, and postages were recorded in the fullest detail in the Petty Cash Book.

I have checked the Cash Book with the Standard Bank Pass Book in detail and have obtained a certificate verifying the balance at the Bank.

The Petty Cash Book has been checked to the Cash Account for amounts paid to the Editor to reimburse himself for money spent by him in postages and other expenses of a small nature. Amounts received and paid for Volume VI have been excluded from the Revenue and Expenditure Account.

The following amounts are owing

| | £ | s | d. |
|-------------------------------------|-----------|-----------|----------|
| For printing Volume V | 23 | 5 | 10 |
| For postage and packing Volume V .. | 8 | 0 | 10 |
| Due to the Treasurer for postage | | 6 | 10 |
| | <u>31</u> | <u>13</u> | <u>6</u> |

Against this there is due and in hand:

| | £ | s | d. |
|--------------------------|-----------|----------|----------|
| For Subscriptions | 14 | 0 | 0 |
| For Parliamentary Grants | 15 | 0 | 0 |
| In hand | 1 | 9 | 6 |
| | <u>30</u> | <u>9</u> | <u>6</u> |

CECIL KILPIN,
Chartered Accountant (S.A.).

SUN BUILDING,
CAPE TOWN,
27th September, 1938

The Society of Clerks-at-the-Table in Empire Parliaments

STATEMENT OF ACCOUNT FOR THE PERIOD FROM 1ST APRIL, 1937, TO 31ST AUGUST, 1938

| REVENUE | | EXPENDITURE | |
|--|------------------|---|------------------|
| | £ s. d. | | £ s. d. |
| Balance as at 31st March, 1937, being excess of Income over Expenditure at that date | 1 12 5 | Volume V for 1936 | 9 11 6 |
| Parliamentary Grants | | Postage and Telephone | 1 15 9 |
| Dominion Parliament of Canada | 10 0 0 | Bank Charges | 12 4 2 |
| Federal Parliament of Australia | 10 0 0 | Cables and Telegraphic Address | 11 5 4 |
| New Zealand | 10 0 0 | Publications and Newspapers | 42 13 1 |
| Union of South Africa | 10 0 0 | Typing and Clerical Assistance and | |
| Southern Rhodesia | 5 0 0 | Roneoing | 100 0 0 |
| New Brunswick (Vols IV and V) | 10 0 0 | Printing and Publishing Volume V on | |
| Transvaal | 5 0 0 | account | 8 8 1 |
| N W Frontier Province (India) | 9 0 0 | Printing and Publishing balance | 7 17 3 |
| Subscriptions. | | Volume IV | 12 11 7 |
| Volume I | 1 17 6 | Stationery | 2 6 0 |
| Volume II | 1 17 6 | Travelling Expenses and Carriage | 3 15 0 |
| Volume III | 2 17 6 | Office cleaners | 3 3 0 |
| Volume IV | 2 17 6 | Gratuities to Messengers | 10 6 |
| Volume V | 60 0 0 | Audit Fee | |
| | | Insurance | |
| Sales | | | |
| Volumes I to V, both inclusive | 69 10 0 | Cash Balance, being Excess of Receipts over Expenditure | 216 1 3 |
| | 77 8 4 | | 9 9 6 |
| | <u>£217 10 9</u> | | <u>£217 10 9</u> |

OWEN CLOUGH
Honorary Secretary-Treasurer and Editor
 Countersigned
 MAURICE J GREEN,
Clerk of the Senate
 DANIEL H. VISSER,
Clerk of the House of Assembly.
 PARLIAMENT OF THE UNION OF SOUTH AFRICA.

Audited and certified correct.
 CECIL KILPIN,
Chartered Accountant (S A.),
 Sun Building,
 Cape Town,
 South Africa
 27th September, 1938

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